



City of Colorado Springs

**ADDENDUM #1
R24-038CA
March 12, 2024**

NAME OF PROJECT: "CMAR Services for East Terminal Unit Upgrades for Colorado Springs Airport"

PROPOSAL DUE DATE: REMAINS: Friday, March 29, 2024 - NO LATER THAN 3:00PM MDT

This document shall become as fully a part of the above named solicitation and Contract Documents as if included and shall take full and complete precedence over anything stated or shown to the contrary in them.

Acknowledgment: Each Offeror shall indicate in the place provided acknowledgment of receipt of this Addendum.

Each and every Offeror, subcontractor, and material supplier shall be responsible for reading each and every item in this Addendum to ascertain the extent and manner it affects the work in which he is interested.

*****CHANGES TO THE PUBLICATION NOTICE*****

The following items and information are corrections and additions to the above referenced project.

- 1. Sample CMAA Contract Published**
- 2. Revised Schedule E, Minimum Insurance Requirements**
- 3. Revised Schedule G, Security and Badging**
- 4. Extend Question Acceptance Deadline to March 19, 2024 by 3:00PM MDT**

Offeror shall acknowledge receipt of this addendum by signing below, and this addendum must be returned as part of the proposal.

Signature

Date

Firm

SCHEDULE G - AIRPORT SECURITY REQUIREMENTS/SIDA BADGING (UPDATED ADDEDUM 1, 3.12.2024)

Portions of this project will require personnel access to the Secure Area (SA) - Security Identification Display Area (SIDA) restricted access area of the Airport.

All Contractors and Sub-Contractors seeking access to any/all restricted areas which include but aren't limited to; AOA/SIDA, AOA, STERILE, and/or SA-SIDA are required to be fingerprinted, complete a Criminal History Record Check (CHRC) and a TSA Security Threat Assessment (STA) to obtain a badge prior to the commencement of construction activities within the access restricted area. The restricted access area includes all work performed on or around the building exterior walls that are within the restricted access area, the terminal concourse, the jet bridges and roof. The landside vehicle parking area, the building interior and the portion of the building exterior walls outside of the secured areas are limited access areas but will not require Airport issued access badge media during construction.

All company representatives (authorized signers) who will authorize the issuance of badges for unescorted access to the restricted area must first complete the CHRC, Security Threat Assessment (STA), SIDA training and Signature Authority Training before the process can begin for any other employees. The fee for fingerprinting is \$45.00 (non-refundable). The Contractor shall be aware that any persons that will be on-site and working within the restricted access area for more than 3 total days (consecutive or non-consecutive) shall require a badge. Contractor's supervisory personnel will be required to have authority to escort.

After results of the background check and security threat assessment are obtained (typically within 2 weeks), contractors will be contacted and scheduled to complete SIDA training. Background checks for applicants born outside of the United States will take longer to process, unless a naturalization number is provided. SIDA training is available Monday-Friday, if appointments are available. Special SIDA Training classes may be able to be scheduled to train a large number of contractor personnel at one time. These arrangements shall be made with COS Badging, however cannot be guaranteed by COS. Upon successful completion of the required training a COS badge will be issued with access points designated depending on where the work is located.

Once the access point to the restricted access area is established, all personnel must be properly authorized by COS and may be inspected by TSA prior to entering the restricted access area.

TSA may make surprise inspections to assure the security procedures in place are being followed and any fines assessed against the airport by the TSA, due to the contractor's negligence, will be passed on to the contractor. Revocation of badges may occur if COS OPS determines the violation deems it.

The Contractor's signatory authority shall designate which badged employees need to have escort privileges and will have to fill out a form giving such privileges. The authority to escort will be indicated by an "E" printed on the badge. Any person that will be on-site, working for more than 3 total days (consecutive or non-consecutive) shall require a badge. If said person will be working on-site less than 3 total days, they may be escorted with prior notification and approval from COS Ops.

Individuals who are escorting must maintain positive control of each person being escorted at all times. No more than 5 persons shall be escorted by one person at any time. Escorts must be within verbal communication range at all times.

The only exception to the escorting duration procedures is where an applicant who has applied for a badge, has submitted to a fingerprint based CHRC and STA, and is awaiting results. These applicants may be escorted until results are received and badge is issued.

If the results to either background check are unfavorable, the individual may not be escorted or badged until the unfavorable results have been adjudicated. Once the authorized signer has been notified of positive results, the individual has up to 30 days to be badged, however if the employee is actively being escorted on-site, they must be badged within 3 business days. If they are not badged within 30 days after notification all results are void and they must be re-fingerprinted. They may not be escorted after their results have expired.

At the completion of the project all badges shall be returned to COS Badging. A fine of \$100 will be imposed for any badges that are not returned within 30 days of project completion.

Appointments are to be made online. Applicants will receive the forms via email directly from their Signatory Authority. Contact COS Badging at 719-550-1936 for any questions regarding the badging process.

SCHEDULE E - MINIMUM INSURANCE REQUIREMENTS (Addendum 1, Revised 3.12.2024)

The following listed minimum insurance requirements shall be carried by all contractors and consultants unless otherwise specified in the City's solicitation package, Special Provisions or Standard Specifications.

1. Commercial General Liability for limits not less than \$5,000,000 combined single limit with \$5,000,000 aggregate for bodily injury and property damage for each occurrence. Coverage shall include blanket contractual, broad form property damage, products and completed operations. **If Airside access is needed, Commercial General Liability for limits not less than \$5,000,000 combined single limit for bodily injury and property damage for each occurrence is required.**
2. Workers' Compensation and Employers Liability as required by statute. Employers Liability coverage is to be carried for a minimum limit of \$1,000,000.

Automobile Liability covering any auto (including owned, hired, and non-owned autos) with a minimum of \$1,000,000 each accident combined single limit. **If Airside access is needed, Automobile Liability for limits not less than \$5,000,000 combined single limit for bodily injury and property damage for each occurrence is required.**
3. Excess Liability for limits not less than \$1,000,000 combined single limit for bodily injury and property damage for each occurrence.
4. Builders Risk or Installation Floater Insurance: Contractor shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property.
5. Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts with limits of not less than \$2,000,000 per occurrence and in the aggregate.
 - a. In the event that any professional liability insurance required by this Contract is written on a claims-made basis, Consultant warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.
 - b. Policy shall contain a waiver of subrogation against the CITY.
6. Pollution Legal Liability Insurance shall apply to sudden and gradual pollution conditions resulting from the escape of release of smoke, vapors, fumes, acids, alkalis, toxic

chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos). If the coverage is written on a claims-made basis, the Contractor

warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed. Policy limits shall be no less than \$1,000,000 per loss with \$2,000,000 aggregate coverage.

8. Technology Errors and Omissions Liability including Network Security and Privacy Liability not less than \$3,000,000 per loss with a \$3,000,000 aggregate.

- a. The policy shall provide a waiver of subrogation.
- b. The insurance shall provide coverage for liability arising from theft, dissemination and/or use of confidential information stored or transmitted in electronic form.
- c. Network Security Liability arising from the unauthorized access to, use of or tampering to gain access to your services including denial of service, unless caused by a mechanical or electrical failure
- d. Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer related property and the data, software, and programs thereon.

Except for workers' compensation and employer's liability insurance and Professional Liability, the **City of Colorado Springs an additional insured**. Certificates of Insurance must be submitted before commencing the work and provide 30 days' notice prior to any cancellation, non-renewal, or material changes to policies required under the contract.

All coverage furnished by contractor is primary, and any insurance held by the City of Colorado Springs is excess and non-contributory.

The undersigned certifies and agrees to carry and maintain the insurance requirements indicated above throughout the contract Period of Performance.

(Name of Company)

(Signature)

(Date)

SAMPLE CONTRACT FOR R24-038CA East Terminal Upgrades (CMAR)

CONTRACT ON THE BASIS OF A STIPULATED PRICE For Contract #

THIS CONTRACT (“Contract”) is effective as of the _____ day of _____ in the year 2024 by and between the Colorado Springs Municipal Airport (AIRPORT), an enterprise of the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation (hereinafter collectively the “OWNER”) and [Legal Name of CMaR] (hereinafter called CMaR).

OWNER and CMaR , in consideration of the mutual covenants set forth herein, agree as follows:

SECTION 1 -WORK.

CMaR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

CMaR shall provide construction management and general contractor services for the upgrading and remodeling of the Airport East Terminal Unit (to include a Federal inspection stations and baggage system), as more fully described on **Exhibit A**, attached hereto and incorporated herein by reference.

The Work will consist of one project completed in two phases: (i) a pre-construction and design phase (“Phase 1”) with an associated lump sum fee for the design Work and, if needed, a Guaranteed Maximum Price (“GMP”) for early procurement Work; and (ii) a construction phase (“Phase 2”) with an associated GMP (collectively the “Project”).

SECTION 2 - OWNER’S REPRESENTATIVE.

The OWNER will provide CMaR with written notice of its designated Owner representative (“OWNER Representative”). CMaR acknowledges and agrees that the designated OWNER Representative assumes all duties and responsibilities assigned by OWNER and has all necessary rights and authority to assist Owner with administering, overseeing, and managing completion of the Work (in accordance with the Contract Documents). Other than the OWNER Representative duties, the OWNER Representative has not assumed any contractual or other duties, and OWNER Representative’s administration and other activities in connection with the Project are solely for the benefit of OWNER. For purposes of the Contract Documents, the term “OWNER Representative” will include consultant.

SECTION 3 - CONTRACT TIMES.

3.0.1 Time is of the essence in the performance of the Work under this Contract with respect to the Substantial Completion Guaranteed Date. The Work may commence no earlier than the date specified in the Notice to Proceed.

In addition to achieving the Substantial Completion Guaranteed Date, CMaR will timely complete each phase of the Project and all Milestones, set forth on **Exhibit A**. The CMaR acknowledges and agrees that CMaR has consulted with OWNER about the times allotted and dates established for each Project phase, each Milestone, and the Substantial Completion Guaranteed Date and agrees, subject to Force Majeure, the time and dates provided for the performance of the Work is reasonable and adequate.

The services of the CMaR and its Subcontractors shall be performed diligently, uninterrupted, and at such a rate of progress as will assure timely completion of each Project phase, Milestones, and the Substantial Completion Guaranteed Date established in the Contract Documents. Therefore, final payments on outlined Milestones will be made once the Milestone Work is fully complete and accepted. CMaR acknowledges and agrees that completion of the Milestones established in the Contract Documents is key in the progression of the Work and achieving the Substantial Completion Guaranteed Date..

No later than [20] calendar days after Effective Date of the Contract and subject to Section 4 of this Contract, OWNER and CMaR will, if needed and in compliance with Subsection 4.0.2, attach an agreed-upon to GMP for Phase 1 of the Project and a separate GMP for Phase 2 of the Project. .

3.0.2 CMaR acknowledges and agrees that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.01 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties each acknowledge and agree that it will be extremely difficult to ascertain the amount of actual damages suffered by OWNER if the Work is not completed on time. Accordingly, if the Substantial Completion Guaranteed Date is not achieved, then CMaR will pay OWNER liquidated damages for delay (but not as a penalty) in the amount of [#####] per day until the Substantial Completion Guaranteed Date is achieved. The Parties agree that the liquidated damages set forth herein are a reasonable estimate of the presumed damages OWNER will suffer as a result of CMaR 's failure to achieve the Substantial Completion Guaranteed date on time. The liquidated damages are the sole and exclusive remedies related to delays in completion of the Work unless and until OWNER terminates the Contract, in whole or in part, for cause. Notwithstanding the foregoing, OWNER may terminate the Contract, in whole or in part, for cause pursuant to paragraph 15.02.A.6 if CMaR is unable to achieve the Substantial Completion Guaranteed Date.

3.0.3 OWNER reserves the right to recover liquidated damages by first deducting the amount thereof from any monies due or payable to the CMaR. In the event liquidated damages are assessed by OWNER pursuant to paragraph 3.02, above, CMaR agrees upon the request or direction of OWNER to include an adjustment for liquidated damages on any pay application submitted after such liquidated damages are assessed. In the event the remaining balance due the CMaR is insufficient to cover the full amount of assessed liquidated damages, the CMaR, or its surety, if applicable, shall pay the amount

due and OWNER shall be entitled to any and all rights and remedies available in law or equity to recover the same.

SECTION 4 - CONTRACT PRICE.

4.0.1 A. OWNER shall pay CMAr for Work performed in accordance with the Contract Documents. For purposes of this Contract, the "Contract Price" includes the total amount to be paid by OWNER to CMAr for performance of Phase 1 and Phase 2 Work to complete the Project.

B. CMAr acknowledges and agrees that for Project Phase 1 and Project Phase 2, the total price to be paid by OWNER for Work completed for each phase, will not exceed the GMP amount for the respective phase set forth on **Exhibit B**, Attachment 1 (pre-construction phase) and Attachment 2 (construction phase). Subject to Force Majeure, Articles 10 and 12 of the General Conditions, or a written Change Order or other Amendment to the Contract, if either Project phase exceeds the particular Project phase GMP set forth on **Exhibit B**, Attachment 1 and/or Attachment 2, then CMAr will perform all necessary completion of the Work at no additional expense to the OWNER

4.0.2 A. In accordance with Subsection 3.0.1, OWNER and CMAr will attempt to agree upon a GMP for each Project phase as specified in the Statement of Work. Each Project phase GMP shall be comprised of the Cost of the Work, as set forth in Article 11 of the General Conditions, plus the CMAr's Fee, if any, for the particular Project, the Contingency for the Project phase as provided in Subsection 4.04, and the Allowance for the Project phase as provided in Subsection 4.05. The Cost of the Work for the Construction Phase for the Package shall be based on the scope of work and specifications for Construction as agreed to by the Parties. OWNER and CMAr will negotiate a "not to exceed" percentage for CMAr General Conditions to be applied to all GMPs. Each agreed-upon, Project phase GMP shall be formally established by the parties **signing a GMP instrument**, in a form materially similar to the attached Exhibit B, Attachment 1 for Phase 1 (the pre-construction phase) (which also includes the corresponding GMP, **schedule of values, and other relevant materials**) and Attachment 2 for Phase 2 (the construction phase).. Once established, each Project phase GMP shall not be exceeded or modified under any condition, except pursuant to either an Amendment or a Change Order to the Contract, and CMAr shall perform all Work required for the completion of each Project phase for no more than the agreed upon final Package GMP for that Package. Any costs incurred by CMAr on a Project phase in excess of the Project phase GMP, as may be modified in an appropriate Amendment or Change Order, shall be the responsibility of CMAr without reimbursement by OWNER. If, in accordance with Subsection 3.0.1 of this Contract, OWNER and CMAr cannot agree on both Project phase GMPs, then OWNER may terminate this Contract, in whole or in part, for convenience pursuant to paragraph 15.3 of the General Conditions.

B. The CMAr's Fee shall be **[##]**% of the Cost of the Work for each Project phase; provided however, for purposes of calculating CMAr's Fee, the Cost of the Work for a Package shall not include (i) any **Preconstruction Services flat fee** for Design Phase Work; (ii) the Cost of the Work attributable to CMAr's Self-Performed Work, (iii) the Cost of the Work for any Work that is not part of an applicable Package, (iv) CMAr's Self-Performed Fee, (v) taxes, except those collected as part of the Cost of Work (vi) insurance, (vii) Bond; and (viii) the purchase price paid by CMAr for any real property interests

acquired by CMAr as part of the Project. The CMAr Fee includes profit and overhead. CMAr shall not charge any fees to the Contingency until the Contingency is used. Insurance and Bond costs are not included in the CMAr's Fee and will be established in each Package GMP as follows: Insurance will be charged at a rate of % of the Package GMP. Bond cost for each Package GMP will be calculated using the following tiers:

[Values to be negotiated]

The CMAr's Fee shall be separately identified in each Application for Payment.

C. If CMAr and OWNER agree that the CMAr may self-perform any Project phase Work, then OWNER and CMAr will agree to a lump sum price for Self-Performed Work based on either (i) using a competitively bid price or (ii) a negotiated lump sum.

D. The Contract Price set forth above is based on the CMAr's bid form, **Exhibit B**, and includes such components as the Project Phase 1 and Project Phase 2 CMAr Fee).

4.0.3 The cost for any Work covered by a Change Order or a Claim for an adjustment of the Contract Price will be determined, in accordance with Article 12 of the General Conditions, and as follows:

- A. For Work performed based on a competitive lump sum bid price obtained by CMAr as required by the Change Order, the bid plus the CMAr's Fee of [###] percent (##%) will determine the value of the change in Contract Price.
- B. For Work where OWNER and CMAr agree that the CMAr may self-perform the Work as required by the Change Order, a lump sum price for Self-Performed Work may be established using one of the methods in subsection 4.02.C, and to this cost to complete the Self-Performed Work, CMAr's Self-Performed Fee of [###] percent (##1%) will be applied to determine the value of the change in Contract Price.
- C. For unit priced Work, the unit price of the Work required by the Change Order as established in the agreed upon Package GMP Amendment, plus the CMAr's Fee of [###] percent (##%) will determine the value of the change in Contract Price.
- D. Where the Work included is not covered by unit prices contained in the Contract Documents, or the Work was not competitively bid, and mutual agreement cannot be reached between OWNER and CMAr under subsection 4.03.B, then the adjustment to the Contract Price shall be determined by OWNER based on the actual Cost of the Work plus the CMAr's Fee and/or CMAr's Self-Performed Fee, as applicable, established in the Contract.

4.0.4 Contingency

Each final Project phase GMP shall include a Contingency, and an Owner's Contingency, in an amount to be determined upon negotiation of the particular final Project phase GMP. The Contingency is available for CMAr's exclusive use for costs that are incurred in performing the Work and that are not already included in a specific line item of the GMP Schedule of Values which make up the Cost of the Work. By way of example, and not as a limitation, such costs include trade buy-out differentials, overtime, acceleration, costs in correcting defective, damaged or nonconforming Work, design errors and omissions, Subcontractor defaults and substitution of Subcontractors made at OWNER'S request,

and CMAr Fee and/or CMAr's Self-Performed Fee, as applicable, and Cost of the Work in excess of specific line items in the GMP Schedule of Values for that Project phase. The use of Contingency, including Owner's Contingency, requires written approval in advance from OWNER. All use of Contingency will be subject to the appropriate CMAr Fee(s) as provided in this Section 4, above. Work covered by Contingency will be represented by a reduction to Contingency and an increase to the Cost of the Work and CMAr's Fee and/or CMAr's Self-Performed Fees, as applicable, paid. Work performed prior to the approval of Contingency, or Owner's Contingency, by OWNER, shall be at risk to the CMAr without possible reimbursement by OWNER.

4.0.5 Allowances

Each final Project phase GMP shall include an Allowance in the amount to be determined upon negotiation of the particular final Project phase GMP. The Allowance is available for CMAr's exclusive use for costs that are known, but that cannot be fully costed at the time of finalization of the final Project phase GMP. By way of example, and not as a limitation, such costs include coordination with on-going projects or subfloor or subgrade improvements. The use of Allowance requires written approval in advance from OWNER. Use of allowances will be subject to the appropriate CMAr Fee(s) as provided in this Section 4, above. Work covered by Allowances will be represented by a reduction to Allowances and an increase to the Cost of the Work and CMAr's Fee and/or CMAr's Self-Performed Fees, as applicable. Work performed prior to the approval of Allowances by OWNER, shall be at risk to the CMAr without possible reimbursement by OWNER.

4.0.6 Shared Savings

The CMAr may earn an additional fee ("Additional CMAr Fee") if, after Final Completion: A) the aggregate Cost of the Work for the Project plus the CMAr's Fee and the CMAr's Self-Performed Fee for the Project is less than the aggregate Project Final GMP ; B) the deadlines for Substantial Completion and Final Completion, as may be extended by OWNER in writing, for each Project phase were met; C) all documents required for Final Payment for each phase of Work for the Project have been submitted in form satisfactory to OWNER; and, D) CMAr has provided OWNER with the bonds required by this Contract. If the conditions in the immediately preceding sentence have been satisfied the difference between (i) the aggregate final GMP for the entire Project and (ii) the aggregate (a) Cost of the Work (including the cost of Self-Performed Work) for the entire Project plus (b) CMAr's Fee for each Project phase and (c) CMAr's Self-Performed Fee for each Project phase shall be considered savings ("Savings") to be shared amongst OWNER and CMAr as follows: after the expiration of the two-year Warranty Period, CMAr shall be entitled to, and OWNER shall pay to CMAr , as the Additional CMAr Fee **(%) of the Savings of the final GMP. The remainder of the Savings (%) shall accrue to OWNER.**

Notwithstanding the forgoing, while Contingencies, **Owner's Contingency**, and Allowances are part of each Project phase GMP; Contingencies, Owner's Contingency, and Allowances will not count toward the Savings that may result from a GMP.

SECTION 5 - PAYMENT PROCEDURES.

5.01 CMAr shall submit Applications for Payment in accordance with Article 14 of the General Conditions. CMAr shall submit Applications for Payment electronically by email to **[Airport Design and Construction Manager or Designee]**. Applications for Payment will be processed by OWNER's Representative as provided in the General Conditions. These payment terms shall also be subject to discounts for prompt payment, if any are set forth

in the Contract Documents, or any other applicable discounts offered by CMAr for any reason, including the terms of any applicable price warranty. Payment by credit card, "P-card," or electronic funds transfer is a means of remitting payment only and shall not be construed as limiting OWNER'S rights or altering any of the terms or conditions incorporated into this Contract. In the event OWNER disputes or contests all or any part of any invoice, OWNER reserves the right to request a replacement invoice stating only the undisputed amount, promptly pay any undisputed amount, and withhold payment of any disputed amount without waiving any of its claims or defenses to payment of the disputed amount. In the event that CMAr issues a replacement invoice for any undisputed amount, it is agreed that such issuance of a replacement invoice does not constitute a waiver of CMAr 's rights with regard to the disputed amount.

5.02 Progress Payments; Retainage. OWNER shall make progress payments on account of the Contract Price on the basis of CMAr's Application for Payment as recommended by OWNER's Representative within 30 days of OWNER's Representative's approval of an Application for Payment and as provided in paragraphs 5.02.A and 5.02.B. below. All such payments will be made according to the Schedule of Values established in this Contract (and, in the case of Unit Price Work, based on the number of units completed).

A. Prior to Substantial Completion, except as otherwise provided herein, progress payments will be made in an amount equal to ninety-five percent (95%) of the undisputed amount of the Application for Payment being processed, but, in each case, accounting for payments previously made and less such amounts as OWNER's Representative shall determine, or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions.

B. OWNER shall pay ninety-five percent (95%) (with the balance being retainage) of materials and equipment not incorporated in the Work, which are delivered, suitably stored, and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.02 of the General Conditions).

C. Pursuant to § 24-91-101, *et seq.*, C.R.S., as amended, an amount equal to five percent (5%) of the amount shown to be due to the CMAr on each Application for Payment shall be withheld for Work required by the Contract Documents. The withheld percentage shall be administered according to §§ 24-91-101 through 110, *et seq.*, and § 38-26-101, *et seq.*, C.R.S., as amended and shall be retained until final payment in accordance with Section 14.07 of the General Conditions.

E. Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as provided in said paragraph 14.07.

F. CMAr acknowledges and agrees that the release, reduction and/or payment of retention by OWNER pursuant to these provisions does not (i) constitute an acceptance of the Work or a waiver or release by OWNER of any claims or rights belonging to OWNER with respect to such Work or the requirements of the Contract Documents; or (ii) establish the date or time for the commencement of any warranties or guarantees with respect to the Work, and that the commencement of any such warranty or guarantee periods will be governed by the other, applicable provisions of this Contract.

G. CMAr acknowledges and agrees that the purpose of the retainage withheld by OWNER under this Contract is to ensure the proper performance of this Contract and that this performance requires, among other things: (i) proper and full performance of all the Work required by and/or reasonably inferable from the Contract Documents, including completion of punch list items and Work to be completed after Substantial Completion; (ii) prompt correction of Work that does not comply with the requirements of the Contract Documents; (iii) timely completion of the Work and the provision of adequate labor and supervision to complete the Work in accordance with the current approved schedule for the performance of the Work; (iv) timely and full payment of all Subcontractors, sub-Subcontractors, materialmen and suppliers providing Work on the Project, in the amounts and in the times required by this Contract; (v) provision of documents, warranties and guarantees, operation and maintenance manuals and other items required by this Contract upon completion of the Project and OWNER use of the Project; and (vi) proper coordination and integration of the Work provided by each separate trade or Subcontractor with all other Work (which coordination and integration may include Work to be performed by individual trades or Subcontractors after the Substantial Completion of the Work assigned to them). CMAr accordingly agrees that if, after OWNER provides CMAr with prior written notice, if CMAr fails to correct any breach of this Contract set forth in such notice, OWNER may use the retainage withheld pursuant to this Contract to pay for any costs and damages incurred by OWNER as a result of the failure of CMAr or its Subcontractors to perform properly, the Contract, including but not limited to any failure to perform the specific requirements described in this paragraph above.

5.03 *Payments to Subcontractors*

A. CMAr shall pay each Subcontractor their appropriate share of payments made to CMGC not later than seven (7) days of CMAr's receipt of payment from OWNER.

B. CMAr hereby agrees that OWNER may, on request, furnish to a Subcontractor information regarding percentages of completion, requests for payment or amounts applied for by CMAr and action taken thereon by OWNER on account of portions of the Work performed by such Subcontractor. However, neither OWNER, nor any other contractor of OWNER shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by Laws or Regulations. Notwithstanding the foregoing, OWNER shall have the right (but not the obligation) to make payments directly to Subcontractors or to make payments to CMAr in the form of joint checks payable to CMAr and specific Subcontractors if, after providing reasonable notice and opportunity to respond to CMAr, OWNER has a good faith reason to believe that payments required to such Subcontractor for Work performed under this Contract have not or will not be made in a timely or complete manner by CMAr. In any such event, CMAr shall provide OWNER, upon request, with a detailed accounting of all amounts paid by CMAr to such Subcontractor and all amounts remaining due under the applicable Subcontract, and with any other information reasonably requested by OWNER.

5.04 *Indemnification*

CMAr shall indemnify and hold harmless OWNER and its officers, directors, officials and employees from and against Losses incurred by OWNER (as defined in the General

Conditions) in connection with the settlement or defense of any claim by a Subcontractor, materialman or supplier, arising out of or in connection with the failure of CMaR to pay as provided herein, any such Subcontractor, materialman, supplier or any other person with whom CMaR has contracted or who is employed directly or indirectly by CM CMaR GC, provided CMaR has been paid (subject to any applicable retention or offset), as required by this Contract, for the Work that is the subject of such claim.

5.05 Title to Work, Materials, and Equipment; Risk of Loss.

CMaR warrants that title (but not risk of loss) to all Work, materials and equipment covered by an Application for Payment will pass to OWNER upon delivery to the Site, free and clear of all liens, claims, security interests or encumbrances, referred to herein as "liens"; and that none of the Work, materials or equipment covered by an Application for Payment will have been acquired by CMaR, or by any other person performing Work at the Site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the supplier or otherwise imposed by a contractor or such other person. Notwithstanding the foregoing, CMaR shall remain responsible for all damage or loss to any Work, materials or equipment until after Substantial Completion as required by the terms of this Contract subject to any recovery from the property insurance provided by CMaR for the Project.

5.06 Lien Release

If any Subcontractor refuses to furnish a release or waiver required by OWNER (with respect to Work for which OWNER has made payment to CMaR in the amounts required by this Contract) and files a lien against the Project, CMaR shall furnish a bond for 150% of the amount claimed and in a form satisfactory to OWNER to indemnify OWNER against any such lien. In the event a Subcontractor files a mechanic's lien or claim for lien against the Project (and provided OWNER has paid CMaR as required by this Contract for the Work that is the subject of such lien or claim), CMaR shall cause such lien or claim for lien to be formally released, bonded against or satisfied, and shall reimburse OWNER for all costs and expenses, including but not limited to attorneys' fees and bonding and title indemnity expenses, incurred by OWNER in contesting, discharging, releasing or satisfying such lien or claim for lien or defending or otherwise participating in such suit. OWNER shall have the right to retain out of any payment then or thereafter to become due to CMaR 150% of the amount claimed in such lien to indemnify OWNER completely against the costs of any lien or claim for lien that may appear at such time in favor of any person claiming by, through, or under CMaR, including, among others, its Subcontractors, which amount shall include reasonable allowances for the projected costs, including but not limited to attorneys' fees to defend any action in connection therewith or deposits which need to be made to have such lien released against the Project. Upon the settlement of such claim, any excess monies held by OWNER from such security shall be paid to CMaR. CMaR shall similarly indemnify and protect and defend OWNER in respect of any lien or claim for lien in favor of any person claiming by, through, or under CMaR, including, among others, its Subcontractors that may appear after Final Payment has been made by OWNER to CMaR in the amounts required by this Contract. CMaR shall have the right to contest any lien or claim covered by this paragraph, provided CMaR has bonded over such lien or claim and CMaR has agreed in writing to fully indemnify and defend OWNER with respect to such lien or claim.

SECTION 6- CMAr's REPRESENTATIONS.

In order to induce OWNER to enter into this Contract, CMAr makes the following representations:

6.0.1. CMAr represents and acknowledges that OWNER has provided CMAr with certain information, documents, and materials with respect to the Site (or contiguous to the Site) or the Project, including certain surveys, geotechnical reports, environmental reports, reports of exploration and tests of subsurface conditions, drawings (including, but not limited to, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site), and other related items. CMAr acknowledges that except as expressly set forth herein, OWNER makes no representation or warranty of any kind with respect to the accuracy or completeness of any such "technical data" or any other information provided to CMAr by OWNER. CMAr further acknowledges that CMAr shall be obligated to verify the accuracy of all materials or information which may impact the Work, including information related to the location of Underground Facilities and/or utilities.

6.0.2. CMAr has examined and carefully studied the Contract Documents (including all exhibits and addenda) listed in Section 7 and the other related data identified in the Solicitation Documents including the "technical data." Based upon this review and analysis, CMAr represents to OWNER that it will perform all of the Work within the Contract Times and within the Contract Price in accordance with the terms of the Contract.

6.0.3. CMAr has visited the Site and performed all necessary inspections needed to become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work and represents to OWNER that it will provide all of the necessary services and perform all of the Work within the requirements of the Contract Documents.

6.0.4. CMAr is familiar with and agrees it will adhere to all Laws and Regulations that may affect cost, progress, performance, and/or furnishing of the Work.

6.0.5. CMAr has carefully studied the technical data which has been identified in the Project technical specifications as provided in paragraph 6.02 of the General Conditions. CMAr accepts the limitations of the extent to which CMAr may rely on the "technical data" contained in such reports and drawings as set forth in this Section 6.05 and Article 4 of the General Conditions. CMAr will obtain and carefully study any additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CMAr and safety precautions and programs incident thereto, which CMAr deems are necessary for performing the Work.

6.0.6. CMAr is aware of the general nature of work to be performed by OWNER.

6.0.7. CMAr has correlated the information known to CMAr, information and observations obtained from visits to the Site, reports and drawings identified in the

Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

6.0.8. CMAr has given OWNER written notice of all conflicts, errors, ambiguities, or discrepancies that CMAr has discovered in the Contract Documents. The written resolution thereof by OWNER is acceptable to CMAr and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

6.0.9. CMAr is satisfied with the conditions applicable to the Work, including, but not limited to: (1) conditions bearing on transportation, disposal, handling, and storage of materials; (2) the availability of water, power, and road access; (3) weather conditions; (4) physical and environmental conditions of the Site; (5) the conditions of the ground and drainage thereof; and (6) Site groundwater.

6.0.10. CMAr expressly recognizes that the Work must be completed within the time and fiscal constraints set forth in the Contract Documents and guarantees that it will perform all of the Work within the Contract Price and the Contract Times in accordance with the other terms and conditions of the Contract Documents.

6.0.11. CMAr is authorized to perform the Work requested under this Contract and is an entity that is authorized to do business in the State of Colorado.

6.0.12. CMAr is familiar with and agrees it will adhere to all federal, state and local Laws and Regulations that may affect cost, progress, performance and/or furnishing of the Work.

SECTION 7- CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire Contract between OWNER and CMAr concerning the Work consist of the following, all of which are incorporated into and form the entire Contract between OWNER and CMAr:

7.0.1. This Contract

7.0.2. General Conditions

7.0.3. Performance and Payment bonds

7.0.4. Notice to Proceed

7.0.5. Exhibit A - STATEMENT OF WORK

- a. Exhibit A, Attachment 1 – Design and Preconstruction Phase Services
- b. Exhibit A, Attachment 2 -Construction Phase Services
- c. Exhibit B - Pricing –CMAr’s Bid Form
- d. Exhibit B, Attachment 1 – Lump Sum Fee for Project Phase 1 Work
- e. Exhibit B, Attachment 2 – Schedule of values and GMP for Project Phase 2 Work
- f. Exhibit C - Airport Security Requirements/SIDA Badging
- g. Exhibit D - Insurance Requirements
- h. EXHIBIT E - AIRPORT IMPROVEMENT PROGRAM REQUIRED

CONTRACT TERMS AND CONDITIONS

7.0.6. The following which may be delivered or issued after the Effective Date of the Contract and are not attached hereto: All Schedule of Values, Submittals, Work Change Directives, Change Orders, and Written Amendments amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.

There are no Contract Documents other than those listed in this Section 7. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

In case of any inconsistency or conflict among the provisions of the Contract and any other terms and conditions of any documents comprising the Contract Documents, the order of precedence shall be as follows: 1) Written Amendments and Change Orders, in reverse chronological order, 3) Work Change Directives, in reverse chronological order 4) the items listed above in 7.01 through 7.09 in the order listed above, except that the Supplemental Conditions shall control over conflicts or inconsistencies between the Supplemental Conditions, the Contract, and the General Conditions. The Contract Documents listed above represent the entire and integrated Contract between the parties hereto, and supersede prior negotiations, representations, or Contracts, either written or oral.

SECTION 8- MISCELLANEOUS.

8.0.1 The General Conditions of the Contract between OWNER and CMaR are referred to herein as the "General Conditions." Terms used in the Contract Documents, which are defined in Article 1 of the General Conditions, will have the meanings indicated therein.

8.0.2 Neither party may assign or transfer any part of this Contract without the written consent of the other party, except to an Affiliate but only if (a) the assignee agrees in writing to be bound by the terms of this Contract and (b) the assigning party remains liable for obligations under the Contract. Any other attempt to transfer or assign is void.

Upon a change of control (for example, through a stock purchase or sale, merger, or other similar form of related-party transaction), (a) the party experiencing the change of control will provide written notice to the other party within 30 days after the change of control, and (b) the other party may immediately terminate this Contract any time between the change of control and 30 days after it receives the written notice in subsection (a).

8.0.3 OWNER and CMaR each bind itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

8.0.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon OWNER and CMaR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.0.5 Independent Contractor. During the Term of this Contract, CMaR shall act at all times as an independent contractor and shall have the responsibility for and control over the details and means of performing the Work, notwithstanding any shared facilities or co-location of offices, an integration of staff within an OWNER'S physical location, or training provided by OWNER to CMaR 's consultants, Subcontractors, Affiliates, employees, agents, or representatives. Acting at all times as an independent contractor, CMaR shall have the responsibility for and control over the details and means of performing the Work. CMaR acknowledges it has the duty to provide continuous, adequate supervision of its personnel, consultants and Subcontractors, if any. Nowhere in this Contract shall it be construed or implied that CMaR or any of its consultants, Subcontractors, Affiliates, employees, agents, or representatives are employees, representatives, or agents of OWNER. CMaR shall be subject to the direction of OWNER only with respect to the scope of the services and the general results required. CMaR shall not make any commitment nor incur any charge or expense in OWNER'S name without the prior written approval of OWNER.

8.0.6 No Third-Party Beneficiaries. It is specifically agreed between the parties that this Contract is not intended by any of its terms, provisions, or conditions to create in the public or any individual member of the public a third-party beneficiary relationship, or to authorize any person not a party to this Contract to maintain suit for personal injuries or property damage pursuant to the terms, conditions or provisions of this Contract.

8.0.7 Counterparts. This Contract may be executed in one or more counterparts, each of which shall be deemed original and all of which together shall constitute one and the same instrument. Copies of signatures shall be permitted for purposes of the binding nature of this Contract.

8.0.8 Publicity. CMaR and OWNER shall not at any time use the name, trademark(s) or trade name(s) of the other in any advertising or publicity without the prior written consent of the other.

8.0.9 Waiver. The failure of a party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of a party in any one or more instances to exercise any option, privilege, or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants, or agreements, and no forbearance by such party of any default hereunder shall in any manner be construed as constituting a waiver of such default.

8.0.10 CMaR to Provide Office Space. The CMaR shall be responsible for providing OWNER-approved and necessary construction trailer space or other office-type space. CMaR shall be responsible for furnishing the office space, installing all necessary equipment, obtaining and maintaining all necessary telecommunications, and utility hook-ups. The OWNER will reimburse CMaR for the reasonable cost of only (i) the expenses for office space, furnishings, and utilities; (ii) office supplies to include, copy paper, notebooks, paper clips XX used directly and only for the Project; (iii) reasonable consumables as determined by the OWNER. CMaR will submit an invoice to the OWNER's Representative for the office supplies no later than thirty days after the purchase of same.

IN WITNESS WHEREOF, OWNER and CMGC have signed this Contract as of the dates written below. Fully executed Contracts have been delivered to OWNER and CMGC. All portions of the Contract Documents have been signed, initialed, or identified by OWNER and CMGC.

This Contract will be effective on the date of the last signature hereto (which is the Effective Date of the Contract).

OWNER: OWNER

CMaR:

By: _____

By: _____

Name: _____

Name: _____

Title: Mayor

Title: _____

Date: _____

Date: _____

City Attorney's Office

Approved as to Form:

By: _____

Name: Michael Gendill

Title: Senior Attorney

**GENERAL CONDITIONS
for Contract # C**

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 DEFINED TERMS

Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

Addenda--Written or graphic instruments issued prior to the opening of Solicitation Responses which clarify, correct, or change the solicitation Requirements of the Contract Documents.

Additional CMAA Fee—Additional fee the CMAA may earn for satisfying the requirements established in subsection 4.0.6 of the Contract and which are calculated in accordance with the Contract Documents upon expiration of the warranty period.

Affiliate--A person or entity by operation of law that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the CMAA.

Application for Payment--The form acceptable to OWNER, accompanied by supporting documentation as is required by the Contract Documents, which is to be used by CMAA during the course of the Work in requesting progress or final payments.

Asbestos--Includes chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated and/or altered.

Asbestos Containing Material (ACM)--Any material that contains more than one percent Asbestos. (5 CCR 1001-10; Reg. 8, Part B, I.B.10)

- Friable ACM -- Any material that contains Asbestos and when dry can be crumbled, pulverized, or reduced to powder by hand pressure and that contains more than one percent Asbestos by weight, area or volume. (5 CCR 1001-10; Reg. 8, Part B, I.B.51)
- Non-Friable ACM – Any material which, when dry, may not be crumbled, pulverized, or reduced to powder by hand pressure. (5 CCR 1001-10; Reg. 8, Part B, I.B.67)

Authorities Having Jurisdiction (AHJs)--All governmental bodies, agencies, authorities, and courts having jurisdiction over any portion of the Work.

Best Management Practices (BMPs)--Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce pollution. BMPs also include treatment requirements, operating procedures, pollution prevention, and practices to control site runoff, spillage or leaks, waste disposal, or drainage from material storage.

Bonds—Performance, materials, and Payment bonds and other instruments of security required under this Contract.

Cash Flow Projection--A schedule prepared by CMAA estimating that portion of the Contract Price to be due during each month of performance.

Change Order--A written order signed by CMAr and OWNER which authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price, a GMP or the Contract Times, issued on or after the Effective Date of the Contract.

Claim--A demand or assertion by CMAr seeking an adjustment of the Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

Construction or Construction Services--The performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work and the furnishing of all services and documents, all as required by the Contract Documents.

CMAr **Fee**-- CMAr fee for the Construction Phase component of the Cost of the Work that is not Self-Performed Work as specified in the GMP which includes all General Condition costs and all costs excluded from the Cost of the Work.

CMAr **Self-Performed Fee**--CMGC's fee for the Construction Phase component of the Cost of the Work that is Self-Performed Work as specified in the GMP which includes all General Conditions associated with Self-Performed Work and all costs excluded from the Cost of the Work.

Construction Manager at Risk (CMAr)--The individual or entity with whom OWNER has entered into the Contract.

Construction Phase Work— Work described in the Statement of Work as Construction Phase Work, which is generally work commenced after execution of the **Final GMP Amendment**.

Contract--The written instrument memorializing the agreement, terms, conditions, covenants, and obligations between OWNER and CMAr with regarding to the Work.

Contract Documents--The Contract Documents which comprise the entire agreement between OWNER and CMAr concerning the Work all of which are incorporated into and form the entire contract between OWNER and CMAr (see Section 7 of the Contract).

Contract Price--The amount payable by OWNER to CMAr for completion of the Work in accordance with the Contract Documents.

Contract Times--The number of days or dates stated in the Contract to: (i) achieve any Milestones or interim Milestones established in the Contract Documents; (ii) achieve Substantial Completion of the Work; and (iii) achieve Final Completion of the Work.

Cost of the Work-- The sum of all costs necessarily incurred, recorded, and paid by CMAr in the performance of the Work including, but not limited to: the total hard and soft costs of labor, materials, provisions, supplies, fees, water, heat, OWNER, Permits, splices, licenses, tests, taxes, transportation, mobilization, demobilization, optimization, traffic mitigation/management, expenses, equipment rentals, equipment purchases, insurance and bond premiums and deductibles, supervision, warranties, engineering, clerical, and accounting services, the value of the use of equipment, and reasonable estimates of other costs which may be reasonably apportioned to procurement and completion of the Work, as further set forth in paragraph **11.01A** of these General Conditions. "Cost of the Work" does not include the CMAr Fee or overhead, profit, insurance and bond premiums and deductibles. Taxes and the purchase price paid by CMAr for any real property

interests acquired by CMAr as part of the Project are included as "Cost of the Work" but are not included in the calculation of the CMAr Fee.

Day--"Day" means a calendar day of twenty-four (24) hours measured from midnight to the next midnight.

Debris--Any discarded material that contains or consists of any of the following: construction, renovation and demolition debris (regardless of how it was generated), building or facility components, components of building systems (HVAC, plumbing, electrical, control, fire protection, roofing), components of pavement or drainage systems, industrial or machinery components, and/or mechanical components from motorized vehicles.

Defective--An adjective which when modifying the term Construction or Work refers to Construction or Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, applicable standard of care, test or approval referred to in the Contract Documents, or has been damaged prior to OWNER's final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion).

Design Phase Work-- described in the Statement of Work as Design Phase Work, which commences upon issuance by OWNER of the Notice to Proceed, and includes but is not limited to pre-construction activities such as review of specifications, standards and design packages, and constructability and value engineering reviews, and concludes upon completion of those tasks listed in the Statement of Work for Design Phase Work.

Drawings--A part of the Contract Documents which OWNER has used to describe the scope, extent, and character of the Work to be performed by CMAr. Shop Drawings and other CMAr submittals are not Drawings as so defined.

Effective Date of the Contract--The date on which the Contract is signed by the OWNER; provided all other parties have properly signed the Contract..

ENGINEER--The individual or entity having a contract with OWNER to furnish engineering services with respect to the Work and who is identified as such.

Environmental Compliance Documentation--All documentation necessary to establish Work has been performed in accordance with the environmental provisions within the Contact Documents, and requirements of Laws and Regulations.

Environmental Media--Earth materials including soil, sand, silt, gravel, rock, stone, sediment, and other naturally occurring solids.

Environmental Receptors--Any regulated Biological Resource or Natural Resource, including also MS4s and sanitary sewer systems.

Final Completion--The date certified by OWNER at which the progression of the Work is to the point where, (i) all Work required by the Contract Documents has been completed and inspected and operates to the performance standards established in the Contract Documents, (ii) all punch list items have been completed to the satisfaction of OWNER; (iii) all documents have been completed and delivered to OWNER as required by the Contract Documents; (iv) CMAr has satisfactorily fulfilled all of its Contract obligations in accordance with the Contract Documents; (v) all Work has been accepted by OWNER; and (vi) a Final Application for Payment has been received in accordance with the Contract Documents.

Final Completion Date-- The date on which Final Completion of the Work occurs.

FINAL Guaranteed Maximum Price (Final GMP)— The maximum price for which all Project phases will be completed, calculated by adding each Project phase together for a total Project sum.

Force Majeure--All events beyond the reasonable control of CMaR, and shall include, but not limited to: acts of God, unusually severe weather, earthquakes, fire, wind, or other natural disaster, unavoidable casualties, strikes or labor disturbances (other than those of its own employees), riots, wars, floods, fires, explosions, global pandemics, acts of nature, supply chain disruptions substantiated by manufacturer's written documentation, acts of government (other than the Colorado Springs City Council), owners of other OWNER, or other contractors not acting on behalf of OWNER, and any other delay (other than a delay directly attributable to actions or inactions of OWNER or OWNER's Consultants) attributable to causes that are beyond the reasonable control of and could not have been mitigated or avoided by CMGC, its Subcontractors or any other person or entity performing Work under contract with, on behalf of or under the direction or supervision of the CMaR.

General Requirements--Sections of the Specifications. The General Requirements pertain to all sections of the Specifications.

Guaranteed Maximum Price (GMP)—The maximum price for which a particular Project phase will be completed as set forth on Exhibit B, Attachment 1 and Attachment 2, et forth in the Contract. . The GMP is comprised of the Cost of the Work; the CMaR Fee; the CMaR Self-Performed Fee, if any; the Contingency; and the Allowance provided for in each Project phase.

Hazardous Environmental Condition--The presence at the Site of Asbestos, Hazardous Waste, PCBs, Petroleum, Hazardous Substances or Hazardous Materials, or Radioactive Material in such quantities or circumstances that may present a danger to persons or property exposed thereto in connection with the Work.

Hazardous Substances or Hazardous Materials--Any substance or material identified as hazardous under any federal, state, or local Laws or Regulations, or other substance or material which may be considered hazardous or otherwise subject to a statutory or regulatory requirement governing handling disposal, and/or cleanup. This includes, but are not limited to, Petroleum products, Radioactive Materials, and all substances which are listed under 40 C.F.R. § 261, *et seq.*, 40 C.F.R. § 302, *et seq.*, 40 C.F.R. § 355, *et seq.*, 49 CFR § 172, *et seq.*, and 29 C.F.R. § 1910.1000.

Hazardous Waste--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 U.S.C. § 6903(5)), and implementing regulations, all as amended from time to time.

Intermediate Guaranteed Maximum Price (Intermediate GMP)—The maximum amount identified in a written Amendment for a defined set of early Construction Phase Work to allow early construction to start or early procurement of materials prior to the development and agreement to the final GMP in accordance with the Contract Documents.

Laws and Regulations; Laws or Regulations - All applicable Federal, State, local, and Airport laws, rules, regulations, ordinances, codes, Permit obligations, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

Lien--Purported charges or encumbrances upon Project funds, real property, or personal property.

Limited Notice to Proceed – A written notice given by OWNER to CMAr authorizing CMAr to proceed with the performance of specific Work in advance of issuance of the full Notice to Proceed by OWNER.

Loss(es)--Any and all liabilities (including but not limited to liabilities arising out of the application of the doctrine of strict liability), obligations, losses, damages, penalties, claims, actions, suits, judgments, costs, fees, assessments, expenses and disbursements (including without limitation legal fees, fees of other professionals, expenses and costs of investigation, court or other dispute resolution procedure costs) sustained and arising in connection with this Contract, including without limitation the Work performed hereunder.

Milestone —The date specified in the Contract Documents for completion of a specified principal event, as set forth in **Exhibit A**. The term “Milestone” includes any interim Milestones established in the Contract Documents.

Municipal Separate Storm Sewer System (MS4)--A conveyance or system of drainages (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by a State, city, town, county, or other public body and designed or used for collecting or conveying stormwater.

Not To Exceed Fee—The maximum amount that CMAr shall be entitled to receive for completion of the Design Phase Work.

Notice--A written document in strict compliance with paragraph 16.01, which shall in no event include actual, verbal, or constructive notice.

Notice of Award--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Contract.

Notice to Proceed--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CMAr may start to perform the Work under the Contract Documents. The term Notice to Proceed includes Limited Notice to Proceed and a full Notice to Proceed.

OWNER’s Consultant-- An individual or entity having a contract with OWNER to furnish services as independent professional associate or consultant with respect to the Project and who is identified as such. This reference may include a project manager and/or OWNERS’ Representative unless the context requires a different meaning.

OWNER’s Observed Holidays—The following holidays:

1. New Year’s Day
2. Dr. Martin Luther King Day
3. President’s Day
4. Memorial Day
5. Juneteenth
6. Independence Day
7. Labor Day
8. Veteran’s Day
9. Thanksgiving Day
10. Day after Thanksgiving
11. Christmas Day

OWNER’s Representative-- A person designated in writing to act as OWNER’s representative with respect to CMAr’s performance of the Work. Such person shall have complete authority to transmit instructions, receive information, interpret and

define OWNER's policies, make decisions with respect to performance of the Work, and provide such other services as may be agreed upon.

Partial Utilization--Use by OWNER of a part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

Performance Bond—A bond guaranteeing that the Project will meet OWNER'S performance requirements listed in the Exhibit A-Statement of Work for a period of two years following Substantial Completion

Permit--Agreements, certifications, code requirements, licenses, permits, and similar types of authorization required by Laws and Regulations and/or before specific Work activities can legally occur.

Petroleum--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (sixty degrees (60°) Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

Polychlorinated Biphenyls (PCBs)--Any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance (40 CFR §761.3).

Potential Contract Change (PCC)--A request submitted by CMAA for a formal change to the Contract Documents resulting from a CMAA -perceived change to the Statement of Work or Specifications.

Project--The total pre-construction, design, and construction constituting the Work to be performed under the Contract Documents (which may be the whole, or a part as may be indicated elsewhere in the Contract Documents).

Proposal--The documents submitted by CMAA in response to the Request for Proposal setting forth the proposed prices and other conditions for the Work to be performed.

Radioactive Material--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C. § 2011, *et seq.*) as amended from time to time, and naturally occurring radioactive material and technologically enhanced material regulated under federal or state Laws and Regulations.

Resources - Biological--Mammals, birds, fish, reptiles, amphibians, insects, nests, eggs, trees, shrubs, plants, etc.

Resources - Cultural and Historical--Archaeological artifacts, Native American concerns, historic structures, fossils, paleontological evidence, human remains etc.

Resources - Natural--Air, land, wetland, stormwater, drainage, surface water, groundwater, etc.

Request for Proposal--The document prepared by or for OWNER specifying and describing OWNER's objectives and the procedure to be followed in preparing and submitting a Proposal and awarding a contract.

Samples--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be evaluated.

Schedule of Values--A schedule comprised of a definitive listing of Project facilities, systems, commodity types and other items included in or required for completion of the Work, as required by Specification 01 29 73, of Exhibit A1The accepted

Schedule of Values shall be incorporated as an attachment to this Contract, and shall be used as the basis for progress payments as set forth in paragraph 14.01 for each major component of the Work.

Self-Performed Work-- Work performed directly by CMAr or by an Affiliate of CMAr.

Shop Drawings--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or on behalf of CMAr and submitted by CMAr to OWNER to illustrate some portion of the Work.

Site-- Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements for access thereto, and other lands furnished by OWNER which are designated for the use of CMGC.

Soil Disturbing Activity--Includes, but is not limited to, any digging, excavating, staging, loading, stockpiling, backfilling, compacting, grading, tilling, drilling, intrusive sampling, and equipment or vehicle movement or any other mechanical activity, that when used, disturbs the surface and/or subsurface soil.

Solicitation Response--The offer or proposal of a respondent submitted on the prescribed form setting forth the prices for the Work to be performed.

Solicitation Documents--All OWNER documents and information describing the proposed Contract and the proposed Contract Documents (including all Addenda issued prior to receipt of Solicitation Responses).

Solicitation Requirements--All requirements identified in the Request for Proposals or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and all other materials included with OWNER's solicitation for the Work.

Specifications--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship, or other general requirements as applied to the Work.

Statement of Work – That part of the Contract Documents consisting of a general statement of the Work required by the Contract Documents, as set forth in Exhibit A. The Statement of Work may refer to and incorporate other attachments or exhibits included as part of the Contract Documents.

Subcontractor--An individual or entity of any tier supplying labor, services and/or materials for the Work and having a direct contract with CMAr or with any other of its Subcontractors for the performance of a part of the Work.

Submittal--A written, or graphic document prepared by or for CMGC which is required by the Contract Documents to be submitted to OWNER by CMAr. Submittals may include Drawings, Specifications, progress schedules, Shop Drawings, Samples, Cash Flow Projections, Plans, and Schedules of Values.

Substantial Completion--the date certified by OWNER on which the Work (or a specified part thereof) has progressed to the point where, in the opinion of OWNER's Representative, the Work (or specified portion thereof) is sufficiently complete, in accordance with the Contract Documents. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to the state of meeting Substantial Completion. The Work will not meet the requirements of Substantial Completion until the following tasks, at a minimum, have been completed: (1) all Milestones have been achieved; (2) the Work has been installed, tested, and is fully operational; (3) all final operations and maintenance manuals have been submitted by the CMGC and approved by OWNER; (4) all training has been completed by CMAr and approved by OWNER; and (5) the CMAr has

notified OWNER in writing that Substantial Completion has been achieved.. Additional requirements for Substantial Completion may be set forth in paragraph 14.04 of these General Conditions.

Substantial Completion Guaranteed Date—The date on which Substantial Completion is required to occur as provided in the Statement of Work.

Supplemental Conditions--That part of the Contract Documents which supplements these General Conditions.

Supplier--A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with CMaR or with any Subcontractor to the Project to furnish materials or equipment to be incorporated in the Work by CMaR or any Subcontractor.

Underground Facilities--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other facilities or attachments, and any encasements containing the facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

Value Engineering/Constructability-- CMaR technical review and analysis of designs, systems, components and materials included within the Work to produce the greatest value for the least cost, providing equivalent or better performance criteria, as accepted by OWNER. Proposals for Value Engineering/Constructability shall be submitted in accordance with the requirements for Cost Reduction Proposals in the Supplemental Conditions.

Work--The entire scope of activities related to construction or the various separately identifiable parts thereof required to be provided by CMaR under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce the construction, and furnishing, installing, and incorporating all materials and equipment into the construction, all as required by the Contract CMaR.

Work Change Directive--A written statement to CMGC issued on or after the Effective Date of the Contract and signed by OWNER ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed, or to emergencies.

Working Day--The word "working day" shall constitute a weekday (Monday through Friday) of twenty-four (24) hours measured from midnight to the next midnight. OWNER's Observed Holidays are not working days.

Written Amendment--A written amendment of the Contract Documents signed by OWNER and CMGC on or after the Effective Date of the Contract.

1.02 TERMINOLOGY

A. *Intent of Certain Terms or Adjectives*

Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of OWNER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract

Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to OWNER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to any provision of the Contract Documents.

B. *Furnish, Install, Perform, Provide*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and in accordance with the Contract Documents.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and in accordance with the Contract Documents.
4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CMAA, “provide” is implied.

C. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with the recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.1 DELIVERY OF BONDS AND CERTIFICATES OF INSURANCE

When CMAA delivers the executed Contract to OWNER, CMAA shall also deliver to the Airport all Bonds and a copy of all insurance policies as CMAA may be required to furnish. (See Article 5 – Bonds and Insurance) Within ten (10) days of the execution of each Final GMP Amendment, CMAA shall deliver to OWNER such Bonds as CMAA may be required to furnish under the Contract Documents. In no event shall CMAA commence Construction Phase Work pursuant to Article 5.01 until OWNER receives such Bonds.

2.2 COMMENCEMENT OF CONTRACT TIMES; NOTICE TO PROCEED

The Contract Times will commence to run on the date stated in the Notice to Proceed. Unless CMAA has failed to deliver the required Bonds and certificates of insurance, a Notice to Proceed will be given within thirty (30) days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the thirtieth day after the Effective Date of the Contract. If CMAA has not received a Notice to Proceed by the thirtieth day, CMAA shall notify OWNER

immediately. Notwithstanding anything else in this paragraph 2.02 to the contrary, CMaR delivery of acceptable Bonds and certificates of insurance as required in paragraph 2.01 of these General Conditions is a condition precedent to OWNER's issuance of the Notice to Proceed.

2.3 STARTING THE WORK

CMaR shall start to perform the Work on the date when the Contract Times commence to run, except as may be otherwise set forth in a Limited Notice to Proceed. No Work shall be done at the Site prior to the date on which the Contract Times commence to run, except as may be otherwise set forth in a Limited Notice to Proceed.

2.4 BEFORE STARTING CONSTRUCTION

- A. *CMaR Review of Contract Documents:* Before undertaking each phase of the Work, CMGC shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CMaR shall promptly report in writing to OWNER any conflict, error, ambiguity, or discrepancy which CMaR may discover and shall obtain a written interpretation or clarification from OWNER before proceeding with any Work affected thereby; however, CMaR shall not be liable to OWNER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CMaR knew or reasonably should have known thereof.
- B. *Schedules:* CMaR shall submit to OWNER's Representative for its timely review, the schedules identified in the Specifications for each Project phase (Phase 1 and Phase 2..
- C. *Evidence of All Required Safety Plans:* Within ten days after the Effective Date, CMaR shall provide to OWNER its initial site-specific safety plan, as required by the Contract Documents.

2.5 PRECONSTRUCTION CONFERENCE

Within twenty (20) days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by CMaR, OWNER's Representative, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph Section 2.04.B, procedures for handling Shop Drawings and other Submittals, requirements for processing Applications for Payment, and maintaining required records.

2.6 INITIAL ACCEPTANCE OF SCHEDULES

At least ten (10) days before submission of the first Application for Payment, OWNER and CMaR shall hold a conference during which OWNER shall review for acceptability the schedules submitted in accordance with the Contract Documents. CMGC shall have ten (10) days after the conference to make corrections and adjustments and to complete and resubmit the proposed schedules for approval by OWNER. No progress payment shall be made to CMaR until schedules are

approved by OWNER's Representative. If timing permits, the conference required by this Section 2.6, may be held at the same time as the pre-construction conference held by the parties pursuant to Section 2.5, above.

ARTICLE 3 - CONTRACT DOCUMENTS: REFERENCE STANDARDS, INTENT, AMENDING, REUSE

3.1 INTENT

- A. The intent of the Contract Documents is to include all items and services necessary for the proper execution and Final Completion of the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. In the event of any conflict between the Contract Documents, and notwithstanding the requirements of Section 7 of the Contract, the greater service, better quality or greater quantity shall have precedence and shall be included in the Work and Contract Price without additional compensation.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from the applicable standard of care, prevailing custom, or trade usage as being required to complete the Work in accordance with the Contract Documents will be provided by CMaR whether or not specifically called for at no additional cost to OWNER, unless clearly provided for by OWNER as part of the Contract Documents. Contractor has no design obligation during the Construction Phase and is entitled to rely on the Specifications and Drawings.
- C. Clarifications and interpretations of the Contract Documents shall be issued by OWNER as provided in Article 9.

3.2 REFERENCE STANDARDS

Standards, Specifications, Codes, Laws, and Regulations

Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of the Effective Date of the Contract, except as may be otherwise specifically stated in the Contract Documents.

3.3 REPORTING AND RESOLVING DISCREPANCIES

A. *Reporting Discrepancies*

If, during the performance of the Work, CMaR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CMaR shall report it to OWNER in writing at once. CMaR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.11) until the

discrepancy has been resolved by one of the methods indicated in paragraph 3.04; provided, however, that CMAA shall not be liable to OWNER for failure to report any conflict, error, ambiguity, or discrepancy unless CMAA knew or reasonably should have known thereof. In the absence of a resolution by one of the methods indicated in paragraph 3.04, the hierarchy set out in Section 7 of the Contract shall control.

B. *Resolving Discrepancies*

Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

1. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
2. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of any Law or Regulation). No provision of any such standard, specification, manual, handbook, code or instruction shall be effective to change the duties and responsibilities of OWNER, CMAA or any of their Subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to OWNER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.4 *AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS*

The Contract Documents may be changed as described below. The effect of such changes on Contract Times and Price or other Claims is set out in Articles 10 and 12 of these General Conditions.

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive. A Written Amendment shall generally be used to modify the non-engineering or non-technical aspects of the Contract Documents; however, Written Amendments may contain such modifications in combination with other changes to the Contract Documents. Change Orders shall generally be used for standalone changes to the engineering or technical aspects of the Contract Documents, or other changes in the Work, and may also be used to adjust the Contract Price or Contract Times. Work Change Directives are used by OWNER to order a change or provide clarification in the Work or to respond to differing Site conditions. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the Parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the Parties as to its effect, if any, on the Contract Price or Contract Times, or settled in accordance with Article 10.05, Claims and Disputes.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following

ways: (i) a Work Change Directive; (ii) OWNER's approval of a Submittal; or (iii) OWNER's Representative written interpretation or clarification.

3.5 COPYRIGHT/INTELLECTUAL PROPERTY

- A. Subject to paragraph C below, CMaR agrees that OWNER will have extensive input in the process of rendering the Design Phase Work associated with this Contract. Therefore, CMaR agrees and acknowledges that all work produced as a result of the Design Phase Work (e.g. video, artwork, brochures, covers, labels, writings, designs, models, etc.) that have been or will be used by or paid for by OWNER, pursuant to the Contract Documents is the property of OWNER and that OWNER is the sole owner of any work product of the Design Phase Work which CMaR has made or will make under the Contract Documents and that compensation to CMaR for acceptance and acknowledgment of this Contract is included in any compensation or price whatsoever paid to CMaR.
- B. CMaR hereby warrants to OWNER that it will take no action to copyright, patent, trademark, or trade secret any and all of the work product of the Design Phase Work described in the Contract Documents.
- C. CMaR shall retain ownership of its intellectual property used, modified or developed in performing the Design Phase Work. CMaR grants to OWNER a royalty-free, non-exclusive license, for use in connection with the use, operation, repair, and maintenance of the facility, to all intellectual property rights in CMaR work product of the Design Phase Work, including, but not limited to, copyright, patent, trademark and trade secrets, including, but not limited to, all rights in perpetuity; provided, however, such license is revocable if OWNER fails to fulfill its payment obligations to CMaR under this Contract. Further, the parties expressly agree that the provisions of this paragraph shall be binding upon the parties and their legal representatives, successors, and assigns. Contractor shall retain ownership of its intellectual property used, modified or developed in performing the Construction Phase Work. CMaR will grant OWNER a royalty-free, non-exclusive license, for use in connection with the use, operation, repair, and maintenance of the facility, to all intellectual property rights in the Construction Phase Work contingent upon OWNER fulfilling its payment obligations to CMaR.
- D. Royalties and fees for patents covering materials, articles, apparatus, devices, or equipment (as distinguished from processes) used in the Work shall be included in the hourly rate amounts paid to CMaR in accordance with Exhibit B. No additional compensation shall be due to CMaR for such items. CMaR shall satisfy all demands that may be made at any time for such royalties or fees and they shall be liable for any damages or claims for patent infringements. CMaR shall, at its own cost and expense, defend all suits or proceedings that may be instituted against OWNER and hold OWNER harmless for infringement or alleged infringement of any patents involved in the Work and, in case of an award, including any costs and attorney fees awarded, and any and all costs and attorney fees associated with any appeals that may be taken from any judgment rendered on any such suits or proceedings of damages, CMaR shall pay such award provided OWNER gives CMaR prompt notice in writing of such claim and permits CMaR to contest same through its counsel or, at its option, to settle by securing for OWNER the right to continue to use such products or by modifying them to avoid infringement, or by reclaiming them and reimbursing OWNER the sum paid therefore; and provided OWNER gives CMaR all necessary authority and assistance, at the expense of CMaR, to enable CMaR to do so. Final payment to CMaR by OWNER will not be made while any suit or claim remains unsettled.

3.6 REUSE OF DOCUMENTS

CMaR and any Subcontractor or Supplier: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of OWNER or OWNER's Consultant, including electronic media editions; and (ii) shall not reuse any of the Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other Project without written consent of OWNER and specific written verification or adaptation by OWNER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CMaR from retaining copies of the Contract Documents for record purposes. All documents including Drawings and Specifications prepared or furnished by CMaR pursuant to this Contract are instruments of service in respect of the Project. OWNER may make and retain copies for information and reference in connection with the use of the Project by OWNER; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by CMaR for the specific purpose intended will be at OWNER'S sole risk and without liability to CMaR. Any such verification or adaptation will entitle CMGC to further compensation at rates to be agreed upon by OWNER and CMaR.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.1 AVAILABILITY OF LANDS

A. OWNER shall furnish the Site. OWNER shall notify CMaR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CMaR must comply in performing the Work. Contractor may submit a Claim for an adjustment to the Contract Price and/or Contract Times pursuant to Paragraph 10.05 to the extent that the existence of such encumbrances or restrictions causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work. Unless otherwise provided in the Contract Documents, OWNER will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If CMaR and OWNER are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in OWNER's furnishing the Site, CMaR may make a Claim therefor as provided in paragraph 10.05.

4.2 SUBSURFACE AND PHYSICAL CONDITIONS

- A. Reports and Drawings: The Project technical Specifications identify:
1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that OWNER has used in preparing the Contract Documents; and

2. Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that OWNER has used in preparing the Contract Documents.
- B. Contractor may rely upon the general accuracy of the “technical data” contained in the reports and drawings. Although the reports and drawings are not Contract Documents, the technical Specifications are Contract Documents. The “technical data” is identified in the Project technical Specifications. Except as otherwise provided in paragraph 4.3, CMaR may not rely upon or make any Claim against OWNER, OWNER’s Representative, or any of OWNER’s Consultants with respect to:
1. The completeness of the reports and drawings for CMaR purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CMaR, and safety precautions and programs incident thereto; or
 2. Other data, interpretations, opinions, and information contained in the reports or shown or indicated in the drawings; or
 3. Any CMaR interpretation of or conclusion drawn from any "technical data" or any other data, interpretations, opinions, or information.

4.3 DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS AT SITE

- A. If CMaR believes that any subsurface or physical condition, or any Hazardous Environmental Conditions unanticipated by the parties at or contiguous to the Site that is uncovered or revealed either:
1. Is of such a nature as to establish that any “technical data” on which CMaR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or
 2. Is of such a nature as to require a change in the Contract Documents; or
 3. Differs materially from that shown or indicated in the Contract Documents; or
 4. Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CMaR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or Hazardous Environmental Conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.10), notify OWNER in writing about the condition. CMaR shall not further disturb the condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

- B. OWNER’s Review: After receipt of written notice as required by paragraph 4.03.A, OWNER’s Representative will promptly review (not to exceed ten (10) days) the pertinent condition, determine the necessity of obtaining additional exploration or

tests with respect thereto and advise CMAr in writing of OWNER's findings and conclusions.

C. Possible Price and Times Adjustments (See Article 10 – Changes in Work)

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition or Hazardous Environmental Condition causes an increase or decrease in CMAr cost of, or time required for, performance of the Work; except, however, the condition must meet any one or more of the categories described in paragraph 4.03.A.

2. CMAr shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. CMAr knew, or should have known through reasonable diligence, of the existence of the conditions at the time CMAr made a final commitment to OWNER with respect to the Contract Price and Contract Times as specified in Article 5 which is likely to occur at the time CMAr proposes a final GMP to OWNER; or

b. The existence of the condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Contract Documents to be conducted by or for CMAr prior to CMAr submitting a proposed final GMP to OWNER; or

c. CMAr failed to give the written notice within the time and as required by paragraph 4.03.A. CMAr hereby affirmatively waives and releases the OWNER from all claims, demands, and/or causes of actions, whether in law or in equity, associated with any unanticipated subsurface or physical condition, or any Hazardous Environmental Conditions. CMAr shall indemnify, defend, and hold OWNER harmless from and against and claim, demand, and/or cause of action, whether in law or in equity, asserted by any third-party associated with any unanticipated subsurface or physical condition, or any Hazardous Environmental Conditions.

3. If OWNER and CMAr are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, OWNER, OWNER's Representative, and OWNER's Consultants shall not be liable to CMAr for any Losses sustained by CMAr on or in connection with any other project or anticipated project.

4.4 UNDERGROUND FACILITIES

A. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to OWNER by the owners of the Underground Facilities, including OWNER, or by others. Nothing contained herein is intended to waive or alter the provisions of the Colorado Excavation ("Call Before

You Dig”) statutes. Unless it is otherwise expressly provided in the Project technical specifications:

1. OWNER shall not be responsible for the accuracy or completeness of any information or data, unless OWNER has performed locates for an Underground Facility, in which case CMaR may rely on OWNER’s locate marks to the same extent as any other excavator under Colorado’s Call Before You Dig statutes would be able to rely on such marks; and
 2. The cost of all of the following will be included in the Contract Price, and CMaR shall have full responsibility for:
 - a. Reviewing and checking all information and data, which requires further examination as reasonably determined by CMaR,
 - b. Requesting locates for all Underground Facilities shown or indicated in the Contract Documents,
 - c. Coordinating the Work with the owners of the Underground Facilities, including OWNER, during construction, and
 - d. The safety and protection of all the Underground Facilities and repairing any damage thereto resulting from the Work.
- B. Not Shown or Indicated
1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CMaR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.10), identify the owner of the Underground Facility and give written notice to that owner and to OWNER. OWNER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CMaR shall be responsible for the safety and protection of the Underground Facility.
 2. If OWNER concludes that a change in the Contract Documents is required it may make a change in the manner set forth in Article 10. If OWNER and CMaR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05.

4.5 REFERENCE POINTS

OWNER shall provide engineering surveys to establish reference points for construction which are necessary to enable CMaR to proceed with the Work. CMaR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of OWNER.

CMaR shall report to OWNER whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.6 HAZARDOUS ENVIRONMENTAL CONDITION AT SITE

CMaR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CMaR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CMaR, Subcontractors, Suppliers, or anyone else for whom CMaR is responsible. Notwithstanding the foregoing, if any Hazardous Environmental Condition is uncovered, revealed or created at the Site, CMaR shall, promptly after becoming aware thereof and before disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.10), give written notice to OWNER, and provide written documentation of the Hazardous Environmental Condition within twenty-four (24) hours.

ARTICLE 5 - BONDS AND INSURANCE

5.1 PERFORMANCE AND PAYMENT BONDS

- A. CMaR shall furnish Performance and Payment Bonds acceptable to OWNER, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all CMaR obligations under the Contract Documents. CMaR shall not begin any work until all Bonds are delivered to the appropriate OWNER's Procurement and Contract Services Representative. These Bonds shall remain in effect through the warranty period, except as provided otherwise by Laws or Regulations or by the Contract Documents. CMaR shall also furnish all other Bonds as are required by the Contract Documents.
- B. All Bonds shall be in the form prescribed by the Contract Documents, except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- C. If the surety on any Bond furnished by CMaR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, CMaR shall within twenty (20) days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.2 LICENSED SURETIES AND INSURERS

All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CMaR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverage so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided herein.

5.3 INSURANCE REQUIREMENTS

- A. See Exhibit D, "Insurance Requirements.
- B. The types and amounts of insurance required under this Contract or any Exhibit attached hereto do not in any way limit the liability of the CMaR, including under any warranty or indemnity provision of this Contract, or any other obligation whatsoever CMaR may have to OWNER or others.
- C. Nothing in this Contract or any Exhibit attached hereto limits OWNER's access to the minimum required types and limits of Insurance found in Exhibit D, "Insurance Requirements."
- D. CMGC shall name OWNER as Additional Insured on CMGC's liability insurance policies covering CMGC's services for the Project.

5.4 ACCEPTANCE OF BONDS AND INSURANCE; OPTION TO REPLACE

If either OWNER or CMaR has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within ten (10) days after receipt of the certificates (or other evidence requested) required by paragraph 2.01. OWNER and CMaR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.5 PARTIAL UTILIZATION, ACKNOWLEDGMENT OF PROPERTY INSURER

If OWNER finds it necessary to occupy or use a portion or portions of the Work in a Package prior to Substantial Completion of all the Work in the Package as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.03 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the

policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CMGC'S RESPONSIBILITIES

6.1 SUPERVISION AND SUPERINTENDENCE

- A. CMAr shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents and to ensure safety for all workers and airport users. CMAr shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CMAr shall not be responsible for the negligence of OWNER or OWNER's Consultant in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CMAr shall be responsible to see that the completed Work complies accurately with the Contract Documents. CMAr is responsible to keep updated as-built drawings on-site for OWNER'S review.
- B. CMAr shall keep on Site at all times a competent resident superintendent thereto who shall not be replaced without written notice to OWNER except under extraordinary circumstances. The superintendent will be CMAr's representative at the Site and shall have authority to act on behalf of CMAr. All communications given to or received from the superintendent shall be binding on CMAr.
- C. CMAr shall provide the OWNER with reasonably detailed daily reports which include each subcontractor on site, the names of each individual on site, each individual's job titles, and the activity(ies) engaged in by each individual. The report from the previous day will be provided to the OWNER's Representative no later than **10:00 am** each Day.
- D. CMAr shall provide OWNER with the contact information of an employee or agent authorized to handle emergencies and. Urgent matters at the airport or on the Project site. The responsible person shall be capable of being on site within 15 minutes after initial contact.

6.2 LABOR

- A. CMAr shall provide competent, suitably qualified personnel to survey, lay out, perform, provide, and construct the Work as required by the Contract Documents. CMAr shall at all times maintain good discipline and order at the Site.

6.3 PROGRESS SCHEDULE

- A. CMAr shall adhere to the progress schedule established in accordance with the Contract Documents. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12.

- B. CMaR shall submit progress reports and schedules to OWNER as required by the Specifications. CMaR superintendent, together with a representative of those Subcontractors as requested by OWNER's Representative, shall attend meetings as required by the Specifications. In the event of any delays in performing or completing Work in accordance with the approved progress schedule, CMaR shall submit to OWNER a written plan for remediating to ensure that Work gets back on schedule, which remediation plan must be accepted by OWNER.

6.4 SUBSTITUTES AND "OR EQUALS"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to OWNER for review under the circumstances described in the Specifications.

6.5 CONCERNING SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- A. CMaR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CMaR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CMaR has reasonable objection.
- B. CMaR is solely responsible for the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to OWNER in advance for acceptance by OWNER by a specified date prior to the effective date of any Intermediate or Final GMPs, and if CMaR has submitted a list, OWNER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Solicitation Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CMaR shall submit for OWNER's approval an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity without a change in bid price. No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of OWNER to reject defective Work.
- C. CMaR shall be fully responsible to OWNER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work required to be performed by CMaR just as CMGC is responsible for CMaR own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER and any such Subcontractor, Supplier, or other individual or entity, nor shall it create any obligation on the part of OWNER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. CMAr shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect Contract with CMAr.

E. CMAr shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with OWNER through CMAr.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CMGC in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for and material and equipment supplied to CMAr by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CMAr and the Subcontractor or Supplier, which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and OWNER's Representative.

H. The CMAr agrees to include in first-tier subcontracts and any lower-tier subcontracts designated by OWNER's Representative under this Contract a clause to the effect that the City's Internal Auditor, or a duly authorized representative from the City, shall, until three (3) years after final payment under the subcontract, have access to and the right to examine any of the Subcontractor's directly relevant books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract," as used in this clause, excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

I. [INTENTIONALLY DELETED]

J. As part of the Design Phase Work, as set forth in Exhibit A, and prior to beginning any procurement of subcontracted services, materials, or equipment, the Contractor shall submit a contracting plan to OWNER for consideration and approval. As part of the contracting plan, Contractor shall submit to OWNER for acceptance a current list of the names of Subcontractors and such other persons and organizations (including those who are to furnish materials or equipment fabricated to a special design) proposed for any and all portions of the Work as well as an indication of which work Contractor wishes to self-perform. OWNER shall promptly reply to the Contractor in writing stating whether or not OWNER has any objections to any proposed Subcontractor or other material or equipment provider or if it needs additional information to evaluate the persons or entities on the list.

K. If OWNER refuses to accept a Subcontractor recommended by the Contractor, the Contractor shall recommend an acceptable substitute and the Construction Work Lump Sum Amount, if applicable, shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued.

L. Each subcontract for a portion of the Work to be performed by a Subcontractor shall include a requirement that it may be assigned by Contractor to OWNER upon termination of this Contract by OWNER for cause pursuant to Article 15 upon provision of written notice from OWNER of its intent to exercise the right to assignment.

M. 1. Colorado labor shall be employed to perform the Work as required and defined in Article 17 of Title 8, of C.R.S.; provided, however that this requirement shall be suspended and of no effect to the extent prohibited or inconsistent with a requirement of federal law or regulation or the terms and conditions of any grant or cooperative agreement to which Utilities is a party and which concerns the Project.

2. Tier II Subcontracting Plan. Prior to issuing a Notice to Proceed, OWNER shall review and accept Contractor's Tier II Subcontracting Plan.

6.6 PATENT FEES AND ROYALTIES

CMaR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. CMaR will indemnify and hold harmless OWNER from and against all Losses arising out of, resulting from, or alleged to arise out of or result from any infringement of patent or trademark rights or copyrights incident to the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device or the misappropriation of any trade secret unless such service is required by the Contract Documents. CMaR will pay any Losses incurred by OWNER and/or awarded against OWNER in a final judgment or settlement approved in advance and in writing by CMaR that it is responsible for under this provision, provided that OWNER notifies CMaR in writing within thirty (30) days of the claim.

6.7 LAWS AND REGULATIONS

A. CMaR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, OWNER and OWNER's Representative shall not be responsible for monitoring CMaR compliance with any Laws or Regulations.

B. If CMaR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CMaR shall bear all Losses arising out of or relating to such Work; however, it shall not be CMaR primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CMaR of CMaR obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of the Effective Date of the Contract having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times submitted by CMaR to OWNER as a Potential Contract Change. If OWNER and CMaR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

D. Compliance with C.R.S. § 8-17.5.102. Pursuant to Colorado Revised Statutes § 8-17.5-102, CMaR certifies that CMaR shall comply with the provisions of C.R.S. § 8-17.5-102. CMaR shall not knowingly employ or contract with an illegal alien to perform work

under this Contract or enter into a contract with a Subcontractor that fails to certify to CMaR that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. For Work to be performed under the Contract CMaR represents, warrants, and agrees that it (i) has confirmed that it does not employ any illegal aliens, either through participation in the e-Verify Program administered by the Social Security Administration and Department of Homeland Security, or by participating in the Colorado Department of Labor and Employment program; and (ii) otherwise will comply with the requirements of C.R.S. § 8-17.5-102(2)(b). CMaR shall inform OWNER of its choice of verification program and will comply with all reasonable requests made in the course of an investigation under C.R.S. § 8-17.5-102 by the Colorado Department of Labor and Employment. If CMaR violates any requirement of this provision or C.R.S. § 8-17.5-102., OWNER may terminate this Contract for breach.

E. CMaR has a duty to report any suspected unlawful act impacting the City of Colorado Springs's operations and its enterprises. Anyone who becomes aware of the existence or apparent existence of fraud, waste, or abuse in City of Colorado Springs is encouraged to report such matters to the City Auditor's Office in writing or on the telephone hotline (719) 385-2387 (ADTR). Written correspondence can be mailed to:

City Auditor
P.O. Box 2241
Colorado Springs CO 80901

Or via email CityAuditManagement@coloradosprings.gov. Any of these mechanisms allow for anonymous reporting. For more information, please go to the weprings.gov/city-auditor/page/reporting-fraud.

6.8 USE OF SITE AND OTHER AREAS

A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and licenses, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. If Contractor requires the use of any additional lands or easement rights for any purpose related to the Work, Contractor shall obtain written permission to use such areas and provide OWNER a copy of the writing. CMaR shall assume full responsibility for any damage to any such lands or areas or of any adjacent lands or areas of third parties resulting from the performance of the Work. Notwithstanding the foregoing, if any such damage is covered by a Builder's All-Risk insurance policy maintained by OWNER, CMaR shall only be required to pay the deductible for the claim covering the damage. Any items of equipment or other special needs regarding storage of materials or equipment shall be addressed in the Specifications.

2. Should any claim be made by any such owner, occupant, or any third party, because of the performance of the Work, and such claim is not covered by a Builder's All-Risk insurance policy maintained by OWNER, CMaR, at CMaR sole expense, shall promptly settle with such other party by negotiation or otherwise resolve the claim or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by law, CMaR hereby releases OWNER and shall fully protect, defend, indemnify and hold harmless OWNER, OWNER's Representative, OWNER's Consultants, the City of Colorado Springs, and the City Council of the City of Colorado Springs, The Colorado Springs OWNER Board of Directors, and their respective employees, agents, and representatives from and against any and all Losses arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, OWNER's Representative, or any other party indemnified hereunder to the extent caused by or based upon CMaR performance of the Work and not covered by a Builder's All-Risk insurance policy maintained by OWNER.

6.9 RECORD DOCUMENTS

CMaR shall maintain in a safe place at the Site reasonably accessible to OWNER's Representative one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to OWNER's Representative and OWNER's Consultants for reference. Upon completion of the Work, CMaR shall deliver the final record documents, Samples, and Shop Drawings to OWNER Representative for review and final approval by OWNER Representative.

6.10 EMERGENCIES

A. In emergencies affecting the safety or protection of persons or the Work, property at the Site or adjacent thereto, or the site itself or any adjacent lands or waters, CMaR is obligated to act to prevent threatened damage, injury, or loss. If an emergency occurs, CMaR shall follow procedures outlined in the Construction Safety Phasing Plan (CSPP) to be developed between OWNER and CMGC and attached hereto as **Exhibit #.** If OWNER determines that a change in the Contract Documents is required because of the action taken by CMaR in response to such an emergency, a Work Change Directive or Change Order will be issued. CMaR shall only utilize appropriately trained personnel to respond to such emergencies.

6.11 CONTINUING THE WORK

CMaR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as OWNER and CMaR may otherwise agree in writing.

6.12 CMAR GENERAL WARRANTY AND GUARANTEE

A. CMaR warrants and guarantees to OWNER and OWNER's Consultants that all Work will be performed in a professional, competent, good, and workmanlike manner and that the Work shall be free from defects in materials, and workmanship. CMaR further warrants that all materials, equipment, and supplies, to the maximum extent reasonably possible unless otherwise approved by OWNER in writing, shall be new and unused, which warranties shall be transferable to OWNER, and further shall furnish satisfactory evidence to OWNER as to the kind and quality of the materials and equipment incorporated into the Work. Any professional services

supplied by CMaR as part of the Work shall be performed in accordance with generally accepted standards and practices and free from material errors. CMaR warranty and guarantee hereunder excludes defects or damage caused by:

1. Abuse, modification, or improper maintenance or operation by persons other than CMaR, Subcontractors, Suppliers, or any other individual or entity for whom CMaR is responsible; or
 2. Normal wear and tear under normal usage.
- B. Except for longer warranties provided in accordance with the Statement of Work or Specifications or extended manufacturer's warranties, CMaR warrants and guarantees the Work on each Package for a period of (2) year(s) from Substantial Completion of the Work on that Package (each being a separate and distinct Warranty Period"). Without limitation of any other rights or remedies of OWNER, if within a Warranty Period any defect in the Work on the Package that is covered by the Warranty Period in violation of the foregoing warranties arises or the Work on such Package is determined by OWNER not to have been completed in accordance with the Contract Documents, OWNER shall have the right to require CMaR to correct the Work or reimburse OWNER for the correction of the Work in accordance with paragraph 13.07. This obligation shall survive both Final Completion and Final Payment for the Work. OWNER shall not be invoiced for any of costs of warranty work and CMaR shall not be entitled to submit any Claim for an increased fee arising therefrom.
- C. All warranties for all equipment shall be stated in the O&M Manual.
- D. CMaR shall provide a consolidated book of warranties in an electronic .PDF format and indexed with a table of contents.
- E. Warranties shall be inclusive of all costs, and will include, but not be limited to, parts, labor, shipping, and travel expenses.
- F. The CMaR shall work with the manufacturer of equipment to repair or replace, without charge to OWNER, any part of the equipment which is defective or showing signs of undue wear within the correction period or replace the equipment with new equipment if the performance is unsatisfactory; furnishing all parts, materials, labor, shipping, and all costs necessary to return the equipment to its specified performance level.
- G. The CMaR shall work with the manufacturer of equipment in a timely fashion, to obtain temporary equipment as necessary to replace warranted items requiring repair or replacement, when warranted items are in use and are critical to the process, as defined by OWNER. In such an instance, CMaR shall reimburse OWNER for any costs incurred by OWNER as a result of using such temporary equipment.
- H. Warranty Equipment:
1. Disclaimers and Limitations: a manufacturer's disclaimers and limitations on product warranties do not relieve the CMaR of the warranty on the Work that

incorporates the products, nor does it relieve Suppliers, manufacturers, and Subcontractors required to countersign special warranties with the CMAr.

- I. OWNER may provide written instructions for correction, including but not limited to: (i) (ii) correction of the affected Work or, if the Work has been rejected by OWNER, removal of it from the Work and replacement with Work that is compliant, and (iii) satisfactory correction or repair or removal and replacement of any damage to other Work,
- J. If CMAr does not promptly comply with the terms of OWNER's instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may but is under no obligation to: order the CMAr to stop the Work, or any portion thereof, until the cause for such order has been eliminated; have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Losses will be paid by CMAr.

In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment. If the correction period begins at an earlier date, then the correction period shall be automatically extended to one (1) year following Substantial Completion.

Where Work (and damage to other Work resulting therefrom) has been corrected, removed, or replaced under this Article 6.18, the warranty and correction period hereunder with respect to such Work will be extended one (1) year after such correction or removal and replacement has been satisfactorily completed. Where OWNER identifies a trend of failures in similar equipment or systems, the extended warranty and correction period provided for in this paragraph shall apply to all such equipment and systems.

- K. None of the following will constitute a waiver of warranty for Work that is not in accordance with the Contract Documents or a release of CMAr obligation to perform the Work in accordance with the Contract Documents:
 - 1) observations by OWNER; 2) recommendations by OWNER's Representative or payment by OWNER of any progress or final payment; 3) the issuance of a certificate of Substantial Completion by OWNER or any payment related thereto by OWNER; 4) use or occupancy of the Work or any part thereof by OWNER; 5) any acceptance by OWNER or any failure to do so; 6) any review and approval of a Submittal; 7) any inspection, test, or approval by others; or 8) any correction of defective Work by OWNER.
- L. CMAr warrants and guarantees that it is a legal entity under Colorado law, and has all right, power and authority to enter into and perform the Contract in accordance with its terms.
- M. CMAr warrants and guarantees that it may be sued and made a party defendant in an action pending in a state or federal court located in the State of Colorado.

- N. NO WARRANTIES OF ANY KIND OTHER THAN THOSE EXPRESSLY PROVIDED FOR IN THIS CONTRACT, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE) SHALL APPLY.

6.13 INDEMNIFICATION.

- A. CMaR shall defend, indemnify, and hold harmless OWNER, OWNER'S Representative, OWNER's Consultants, the City of Colorado Springs, the City Council, the Colorado Springs OWNER Board of Directors, and their respective officers, directors, partners, representatives, employees, agents, and other consultants and subcontractors of each and any of them, and assigns (collectively, the "Indemnitees"), from and against all Losses for bodily injury (including death) or property damage to the extent caused by the willful misconduct, or negligent, reckless, or tortious acts or omissions of CMaR, its agents, servants, employees, Subcontractor or agents, servants or employees of any Subcontractor. For purposes of this paragraph, "third party" means any and all persons that are not a party to this Agreement but in all cases excluding: (i) Indemnitees under this paragraph; (ii) any entity with an equity or security interest in the Site or OWNER's existing facilities at or around the Site; (iii) any person that seeks to claim any rights, power or privileges of OWNER; or that seeks to claim as a third party beneficiary of OWNER; or (iv) any individual or entity in contractual privity with the OWNER with respect to the specific Package under which the Losses have arisen. No portion of the Work, electricity, fuel or hydrocarbons is "third party" property for the purposes of indemnification.
- B. Actions by Government Authorities. CMaR shall defend, indemnify, and hold Indemnitees harmless from and against all claims by any governmental authority having jurisdiction presenting a claim for taxes due that are CMaR responsibility, including, without limitation, taxes based on gross receipts or on income of CMaR, any of its Subcontractors, or any of their respective agents or employees with respect to any payment made to or earned by CMaR, any of its Subcontractors, or any of their respective agents or employees for the Work under this Contract.
- C. CMaR shall defend, indemnify, and hold harmless Indemnitees against all Losses arising from any claim or legal action for unauthorized disclosure or use of any trade secrets, or of patent, copyright, or trademark infringement ("Infringement Claims") arising from CMaR performance (or that of its Subcontractors) under this Contract or otherwise asserted against OWNER that: (a) concerns any equipment, materials, supplies, or other items provided by CMaR or any Subcontractor under this Contract; (b) is based upon or arises out of the performance of the Work by CMaR or any Subcontractor, including the use of any tools or other implements of construction by CMaR or any Subcontractor; (c) is based upon or arises out of the design or construction of any item by CMaR or any Subcontractor under this Contract or the operation of any item according to directions embodied in the final process design, or any revision thereof, prepared or approved by CMaR or any Subcontractor; or (d) affects OWNER's ability to operate the Project except to the extent arising from information/technology provided or specified by OWNER.
- D. Notice; Defense; Settlement. An Indemnitee under this Article or any other indemnification provision set forth in this Contract shall, within fourteen (14) days after the receipt of written notice of the commencement of any legal action or of any claims against such Indemnitee in respect of which indemnification will be sought,

notify the indemnitor with a written notice thereof. Failure of the Indemnitee to give such written notice will reduce the liability of the indemnitor by the amount of damages attributable to the failure of the Indemnitee to give such written notice to the indemnitor, but the failure so to notify shall not relieve the indemnitor from any liability that it may have to such Indemnitee otherwise than under the indemnity agreements contained in this Contract. In case any such claim or legal action shall be made or brought against an Indemnitee and such Indemnitee shall notify the indemnitor thereof, the indemnitor may (with the consent of the Colorado Springs City Attorney), shall, assume the defense thereof. After written notice from the indemnitor to such Indemnitee of an election to assume the defense thereof and approval by the Indemnitee of counsel selected by the indemnitor which approval shall not be unreasonably withheld, the indemnitor will not be liable to such Indemnitee under this Article for any legal fees or expenses subsequently incurred by such Indemnitee in connection with the defense thereof so long as the indemnitor continues to provide such defense in a diligent and timely manner. No Indemnitee shall settle any indemnified claim over which the indemnitor has not been afforded the opportunity to assume the defense without the indemnitor's written approval, which may not be unreasonably withheld. The indemnitor may settle any such claim at its own expense; however, the indemnitor must obtain prior written consent for any settlement from the Colorado Springs City Attorney, which such consent shall not be unreasonably withheld. The Indemnitee shall provide reasonable assistance to the indemnitor, in connection with such legal action or claim. If the indemnitor assumes the defense of any such claim or legal action, any Indemnitee shall have the right to employ separate counsel in such claim or legal action and participate therein, and the reasonable fees and expenses of such counsel shall be at the expense of such Indemnitee, except that such fees and expenses shall be for the account of the indemnitor if: (a) the employment of such counsel has been specifically authorized by the indemnitor; or (b) the named parties to such action (including any impleaded parties) include both such Indemnitee and the indemnitor and representation of such Indemnitee and the indemnitor by the same counsel would, in the reasonable opinion of the Indemnitee, be inappropriate under applicable standards of professional conduct due to actual or potential conflicting interests between them. Notwithstanding anything to the contrary in this Article, the Indemnitee shall have the right, at its expense, to retain counsel to monitor and consult with indemnitor's counsel in connection with any such legal action or claim. To the extent prohibited by Section 13-50.5-102(8), C.R.S., the indemnification obligations of indemnitor shall not require indemnitor to indemnify or hold harmless OWNER from its own negligence.

- E. Injunction. If OWNER is enjoined from completion of the Project or any part thereof, or from the use, operation, or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, for which OWNER reasonably believes CMaR owes an indemnity under this paragraph 6.13, CMaR shall promptly use reasonable efforts to have such injunction removed at no cost to OWNER. If any such claim, suit or proceeding, the Project or any part, combination or process thereof is held to constitute an infringement and its use is permanently enjoined, CMaR shall at its own expense and without impairing performance requirements, either replace the infringing Work or part, combination or process thereof with non-infringing components or parts or modify the same so that they become non-infringing. If CMaR is unable to do so within a reasonable time, CMaR promptly shall use reasonable efforts to secure for OWNER a license, at no cost to OWNER, authorizing continued use of the infringing Work

- F. In any and all claims against OWNER, the City of Colorado Springs, the City Council, the Colorado Springs OWNER Board of Directors, or their respective consultants, agents, officers, directors, partners, representatives, or employees which are brought by any employee of CMaR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work (or the survivor or personal representative of such person), or anyone for whose acts any of them may be liable, the indemnification obligations under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CMaR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- G. CMaR understands that OWNER may not have title to all properties where Work is being performed; therefore, to the extent that CMaR has received payment for Work performed, CMaR agrees to waive all rights to filing of any lien, including a mechanic's lien, on any property where the Work is performed. To the extent that CMaR has received payment for Work performed, CMaR shall also not allow any of its Subcontractors to file a lien, including a mechanic's lien, on any property where Work is performed; and, CMaR shall indemnify and hold harmless OWNER and its Affiliates (collectively, the "Lien Indemnitees") and defend each of them from and against any and all Losses arising out of any and all claims for payment, whether or not reduced to a lien or mechanic's lien, filed by any Subcontractor performing any portion of the Work, including reasonable attorneys' fees and expenses incurred by any Lien Indemnitee in discharging any such liens or similar encumbrances. If CMaR shall fail to discharge promptly any such lien or claim for payment filed against the Project or any interest therein, upon any materials, equipment, or structures encompassed therein, or upon the premises upon which they are located, the Site and/or premises upon which they are located, any Lien Indemnitee may so notify CMaR in writing, and CMaR shall then: (a) satisfy all such liens and claims (including, for example, bonding around such lien); or (b) defend Lien Indemnites against all such liens or claims and provide assurances of payment as described in the last sentence of this paragraph. If CMaR does not satisfy such liens or claims for payment within ten (10) days from the Lien Indemnites' Notice, give such Lien Indemnitee reasons in writing that are reasonably satisfactory to such Lien Indemnitee for not causing the release of such liens or paying such claims, or contest such liens or claims in accordance with the provisions of the last sentence of this paragraph, any Lien Indemnitee shall have the right, at its option, after written notification to CMaR, to cause the release of, pay, or settle such liens or claims, and OWNER at its sole option may: (y) require CMaR to pay, within five (5) days after request by OWNER; or (z) offset against any retainage or other amounts due or to become due to CMaR (in which case OWNER shall, if it is not the applicable Lien Indemnitee, pay such amounts directly to the Lien Indemnitee causing the release, payment, or settlement of such liens or claims) all actual costs and expenses incurred by the Lien Indemnitee in causing the release of, paying, or settling such liens or claims, including administrative costs, attorneys' fees, and other expenses. CMaR shall have the right to contest any such lien; provided it first provides to OWNER a bond or other assurances of payment reasonably satisfactory to OWNER in the amount of such lien and in form and substance reasonably satisfactory to OWNER.

- E. Nothing in this Contract shall be interpreted to limit or prevent the protections afforded to OWNER or the City of Colorado Springs under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

6.14 RISK OF LOSS OR DAMAGE

CMAr Assumption of Risk. From the Notice to Proceed Date until the Substantial Completion Date, CMAr assumes risk of loss and full responsibility for the cost of replacing or repairing the damage to the Work and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) which are purchased by CMAr or OWNER (during the time such OWNER-purchased equipment arrives on Site and are in CMAr care, custody and control) for permanent installation in or for use during construction of the Work regardless of whether OWNER has title thereto under this Contract, unless such loss or damage is a result of the negligence or intentional misconduct of OWNER or OWNER's agents, in which case OWNER shall be responsible for such loss or damage. OWNER shall bear this risk and responsibility after the Substantial Completion Date except (i) to the extent any such loss or damage occurs during the performance of, and as a result of, Work being performed by CMAr or any Subcontractor or (ii) to the extent such loss or damage results from the negligence or intentional misconduct of CMAr or any Subcontractor, including any of their employees or agents. If any portion of the Work for which CMAr has risk of loss or damage is lost or damaged, then CMAr shall replace or repair any such loss or damage and complete the Work in accordance with this Contract.

ARTICLE 7 - WORK BY OTHERS

7.1 RELATED WORK AT SITE

- A. OWNER may perform other work at the Site by any means or for any reason. If such other work is not noted in the Contract Documents, then:
1. Written notice thereof will be given to CMAr prior to starting any such other work; and
 2. CMAr may make a request for an adjustment in Contract Price or Contract Times if CMAr believes that such performance will involve additional expenses to CMAr or requires additional time. If OWNER and CMAr are unable to agree on entitlement to, or on the amount or extent (if any) of, any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.
- B. CMAr shall allow each other laborer or contractor identified by OWNER's written notice proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CMAr shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CMAr shall not

endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of OWNER and the others whose work will be affected.

- C. If the proper execution or results of any part of CMaR Work depends upon work performed by others under this Article 7, CMaR shall inspect such other work and appropriate instruments of service and promptly report to OWNER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CMaR Work. CMaR failure to so report will constitute an acceptance of such other work as fit and proper for integration with CMaR Work except for latent defects and deficiencies in such other work.
- D. Should CMaR cause damage to the Work or property of any separate laborer or contractor or any authorized third party at the Site, or should any dispute arising out of or resulting from CMaR performance of the Work at the Site be made by any laborer, separate contractor, or authorized third party against CMaR, OWNER, OWNER's Representative, or the Colorado Springs City Council, the Colorado Springs OWNER Board of Directors, the OWNER Consultants, or any other person, CMaR shall promptly attempt to resolve the dispute with such other party by negotiation, dispute resolution proceeding, or at law. CMaR hereby releases OWNER and shall fully protect, defend, and indemnify the Indemnitees from and against any and all Losses for damage to or loss of tangible property damage brought by a separate contractor of OWNER against any Indemnitee to the extent caused by the willful misconduct, or the negligent, reckless, or tortious acts or omissions of CMaR or anyone for whose acts CMaR may be liable in the performance of its obligations under this Contract.
- E. Should a separate contractor cause damage to the Work or property of CMaR or should the performance of Work by any separate contractor at the Site give rise to any other claim for relief, CMaR shall not institute any action, legal or equitable, against any Indemnitee or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any mediator which seeks to impose liability on or to recover damages from any Indemnitee on account of any such damage or claim for relief.
- F. If CMaR is delayed at any time in performing or furnishing Work by any act or neglect of a separate contractor and OWNER and CMaR are unable to agree as to the extent of any adjustment in Contract Times and Contract Price attributable thereto, CMaR may make a Claim for an extension of time and/or an increase the Contract Price in accordance with Article 10.

ARTICLE 8 - OWNER's RESPONSIBILITIES

8.1 COMMUNICATIONS TO CMAR

Except as otherwise provided in the Contract Documents, OWNER shall issue all communications to CMaR through OWNER's Representative.

8.2 FURNISH DATA

OWNER shall promptly furnish the data required of OWNER under the Contract Documents.

8.3 FURNISHED SERVICES AND MATERIALS

- A. OWNER-Furnished Materials and Equipment. Work performed by OWNER is covered in **Exhibit A** -- Statement of Work
- B. OWNER-Furnished Materials.
 - 1. OWNER will furnish CMAr material as specified in **Exhibit A**. CMAr can obtain such material at OWNER's storage yard identified by the OWNER Representative Colorado Springs, Colorado. CMAr must carefully examine materials and equipment furnished by OWNER at the time it is obtained from OWNER and shall immediately notify OWNER if any of the materials or equipment are defective or otherwise fail to conform to the contract documents. OWNER reserves the right, however, to authorize the installation of such materials or equipment.
 - 2. CMAr is solely responsible for all materials and equipment obtained from OWNER, including damage subsequent to picking up and examining the materials. CMAr shall, at CMAr sole expense, replace any such materials or equipment that is damaged or unaccounted for at the time it is required for incorporation into the WORK. All replacement materials and equipment must conform to those specified in the contract documents.
 - 3. OWNER will furnish CMAr with the equipment specified in Exhibit N/A____ to complete the Work ("OWNER's Equipment"). After ensuring that OWNER's Equipment is operational and safe to use, CMAr will operate OWNER's Equipment at CMAr own risk. CMAr shall notify OWNER immediately if OWNER's Equipment is not operational and/or safe to use. CMAr is responsible for all damages it causes to OWNER's Equipment, ordinary wear and tear excepted. OWNER is also responsible for all damages it causes to persons and/or property while using OWNER's Equipment, including without limitation damage to OWNER's facilities. CMAr shall always use OWNER's Equipment in a safe manner and shall always staff OWNER's Equipment with personnel who are competent and qualified to operate OWNER's Equipment. CMAr shall only allow personnel who have received proper training and, if applicable, possess valid credentials required to operate OWNER's Equipment. Prior to CMGC use of OWNER's Equipment, CMAr shall provide OWNER with proof, to the satisfaction of OWNER, that the persons who are to operate the equipment have satisfied all training requirements and have current credentials. In addition, OWNER shall have the opportunity to observe and test CMAr proposed equipment operators on the use and operation of the OWNER's Equipment prior to such proposed operators being allowed to operate the OWNER's Equipment independently.

8.4 PAY PROMPTLY WHEN DUE

OWNER shall make payments to CMAr promptly when they are due as provided in paragraphs 14.02 and 14.07.

8.5 LANDS AND EASEMENTS; REPORTS AND TESTS

OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CMAr copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized in preparing the Contract Documents.

8.6 LIMITATIONS ON OWNER'S RESPONSIBILITIES

OWNER shall not supervise, direct, or have control or authority over, nor be responsible for, CMAr means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CMAr to comply with Laws and Regulations applicable to the performance of the Work. OWNER will not be responsible for CMAr failure to perform the Work in accordance with the Contract Documents.

8.7 APPROPRIATION OF FUNDS

This Contract is expressly made subject to the limitations of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Contract, with respect to any financial obligations of OWNER which may arise under this Contract in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Contract at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Contract, including any sub-agreement, attachment, schedule, or exhibit thereto, by OWNER.

ARTICLE 9 - OWNER'S REPRESENTATIVE, ENGINEER'S, AND PROGRAMMER'S AUTHORITY

9.1 OWNER'S REPRESENTATIVE, ENGINEER, AND PROGRAMMER RESPONSIBILITIES AND AUTHORITY

- A. The OWNER's Representative is identified in Section 2 of the Contract. The duties and responsibilities and the limitations of authority of the OWNER's Representative during construction are set forth in the Contract Documents and will not be changed without notice to CMAr. OWNER may, for any reason, change the person identified as the OWNER's Representative by provision of notice in writing provided in accordance with Section 16.01 of these General Conditions.
- B. If an ENGINEER is given authority, such authority shall be described in the Supplemental Conditions attached to this Contract.

9.2 VISITS TO SITE

- A. OWNER's Representative will make visits to the Site at intervals appropriate to the various stages of construction as OWNER's Representative deems necessary in order to observe the progress that has been made and the quality of the various aspects of CMAr executed Work. Based on information obtained during such visits and observations, OWNER's Representative, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. OWNER's Representative will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. OWNER's Representative's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, OWNER's Representative will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.
- B. OWNER's Representative's visits and observations are subject to all the limitations on OWNER's Representative's authority and responsibility set forth in this Contract. OWNER's Representative will not supervise, direct, control, or have authority over or be responsible for CMAr means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CMAr to comply with Laws and Regulations applicable to the performance of the Work.

9.3 CLARIFICATIONS AND INTERPRETATIONS

OWNER Representative will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as may be needed, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Upon approval by OWNER, such written clarifications and interpretations will be binding on OWNER and CMAr. If OWNER and CMAr are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.4 AUTHORIZED VARIATIONS IN WORK

OWNER's Representative may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Work Change Directive and will be binding on OWNER and also on CMAr, who shall perform the Work involved promptly. When Work Change Directives are issued, they shall be compiled in a Change Order within ninety (90) days following issuance. If OWNER and CMAr are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Work Change Directive, a Claim may be made therefor as provided in paragraph 10.05.

9.5 REJECTING DEFECTIVE WORK

OWNER's Representative will have authority to disapprove or reject Work which OWNER's Representative believes to be defective, or that OWNER's Representative believes will not produce a completed Project that conforms to the Contract Documents. OWNER's Representative will also have authority to require special inspection or testing of the Work as provided in paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.6 DETERMINATIONS FOR UNIT PRICE WORK

If the Contract Documents call for any Unit Price Work, OWNER's Representative will determine the actual quantities and classifications of Unit Price Work completed by CMaR. OWNER's Representative will review with CMaR the OWNER's Representative's preliminary determinations on such matters before rendering a written decision thereon in connection with an Application for Payment or for any other purpose called for by this Contract. OWNER's Representative's written decision thereon will be final and binding upon OWNER and CMaR, subject to the provisions of paragraph 10.05.

9.7 DECISIONS ON REQUIREMENTS OF CONTRACT DOCUMENTS AND ACCEPTABILITY OF WORK

- A. OWNER's Representative will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the accountability or acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Times will be referred initially to OWNER's Representative in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the claimant to OWNER's Representative and other party to the Contract promptly as required by paragraph 10.05.A. Any responses to the claim, dispute, other matter, or any supporting data related thereto shall be submitted as also set forth in paragraph 10.05.A, (unless OWNER's Representative allows additional time). OWNER's Representative will render a formal decision in writing as is also provided in paragraph 10.05.A.
- B. OWNER's Representative's written decision on such claim, dispute, or other matter will be final and binding upon OWNER and CMaR unless, within thirty (30) days after issuance of the OWNER's Representative's written decision, either party appeals the decision by giving the other party and OWNER's Representative written notice of request for dispute resolution pursuant to paragraph 10.05, or otherwise as set forth in paragraph 10.05.B.
- C. If agreed by the Parties to the dispute, further resolution may first be attempted by means of executive negotiation rather than immediate resort to paragraph 10.05 dispute resolution, without waiving any rights hereunder, so long as such agreement to so proceed is reached and documented in writing within the time that the notice of request for paragraph 10.05 dispute resolution would otherwise be due. If executive negotiation does not resolve the dispute within sixty (60) days of the date of the written agreement to proceed by executive negotiation, then any party remaining dissatisfied with the OWNER's Representative's initial decision must give written notice of resort to paragraph 10.05 dispute resolution no later than

the seventieth (70th) day after the date of the agreement to proceed by executive negotiation. In the absence of such request, the OWNER's Representative's decision shall be final.

9.8 LIMITATIONS ON OWNER'S REPRESENTATIVE'S AUTHORITY AND RESPONSIBILITIES

- A. Neither OWNER's Representative's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by OWNER's Representative in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by OWNER's Representative shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by OWNER to CMAA, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. OWNER's Representative will not be responsible for the acts or omissions of CMAA or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- C. OWNER's Representative's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, scheduled, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required by paragraph 14.07.A to be delivered will only be to determine generally that their content or results conforms to the requirements of the Contract Documents.

ARTICLE 10 - CHANGES IN THE WORK; CLAIM

10.1 AUTHORIZED CHANGES IN THE WORK

- A. Without invalidating the Contract and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CMAA shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). By issuing a Written Amendment, a Change Order, or a Work Change Directive, OWNER hereby acknowledges that either (1) OWNER has an adequate appropriation of funds to compensate for the additional Work or (2) the additional Work is covered under a remedy-granting provision contained herein.
- B. OWNER may, in anticipation of possibly ordering an addition, deletion, or revision to the Work, request CMAA to prepare a proposal of cost and times to perform OWNER's contemplated changes in the Work. OWNER is not responsible for any cost incurred by CMAA associated with the preparation of the proposal. CMAA written proposal shall be transmitted to the OWNER's Representative promptly, but not later than fourteen (14) days after CMAA's receipt of OWNER's written request and shall remain a firm offer for a period not less than forty-five (45) days after receipt thereof. CMAA is not authorized to proceed on a OWNER-contemplated

change in the Work prior to CMAr's receipt of an executed Change Order or Work Change Directive incorporating such change into the Work.

- C. Notwithstanding the foregoing, however, and in accord with C.R.S. § 24-91-103.6 (2)(c), if CMAr has provided OWNER a cost estimate in response to a Work Change Directive, then OWNER shall periodically reimburse CMAr costs incurred pursuant to a Work Change Directive that adds compensable work to the Contract until the Change Order or Amendment has been finalized.
- D. If OWNER and CMAr are unable to agree on entitlement to, or on the amount or extent, of an adjustment, if any in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made for that as provided in paragraph 10.05.
- E. In the event CMAr believes that OWNER has informally directed a material change to the Statement of Work or Specifications, CMAr may submit to OWNER a Potential Contract Change seeking a formal change to the Contract Documents for consideration by OWNER. A Potential Contract Change must be submitted by CMAr to OWNER no later than fourteen (14) days from the event giving rise to the Potential Contract Change along with all documentation substantiating the Potential Contract Change, including CMAr statement of the value of the Potential Contract Change and any requested increases to the Contract Price or Contract Times. If OWNER approves a request for a Potential Contract Change, the Potential Contract Change shall be implemented through a Change Order or Written Amendment to the Contract. If OWNER denies a Potential Contract Change request submitted by CMAr, then CMAr shall follow the Claim process set forth in paragraph 10.05 of this Article if they wish to dispute the denial.
- F. CMAr shall make a request for equitable adjustments based on the cost estimates prepared in response to a Written Amendment, Change Order, and/or Work Change Directive as provide in this Contract, as follows:
 - 1. Labor: The cost of labor will be calculated based on the rate schedule submitted and agreed to by OWNER as part of establishing the GMP for Construction Phase Work. If an hourly rate has not been established for any particular labor category, then labor costs will be calculated based on the actual cost for wages for each craft or type of workers performing the extra Work at the time the extra Work is performed. Labor costs for equipment operators and helpers will be paid only when such costs are not included in the invoice for the equipment rental. The labor costs for foremen shall be apportioned to all of their assigned Work and only that applicable to extra Work shall be paid.
 - 2. The cost of materials shall be invoiced by CMAr to OWNER based on the actual cost to CMAr, however, in no event shall OWNER pay more for materials pursuant to a Work Change Directive, Change Order, and/or Written Amendment than the lowest, current price at which such materials are locally available and may be delivered to the Site in the quantities involved, plus the cost of freight, delivery, and storage, subject to the following:
 - a. All trade discounts, rebates, refunds, and returns from sale of surplus materials and equipment shall accrue to OWNER, and CMAr shall make provisions so that they may be obtained.

b. For materials secured by other than a direct purchase and direct billing to CMaR, the cost shall be deemed to be the price paid to the actual supplier as determined by OWNER plus CMaR Fee. Except for actual costs incurred in the handling of such materials, additional markup will not be allowed.

c. Payment for materials from sources owned wholly or in part by the CMaR, its Subcontractors or Suppliers and the purchasers shall not exceed the price paid by the source for similar materials from said sources on extra Work items or the current wholesale price for such materials delivered to the Site, whichever price is lower, plus CMaR Fee.

d. If in the opinion of OWNER, the cost of materials is excessive, or the CMaR does not furnish satisfactory evidence of the cost of such material, then the cost shall be deemed to be the lowest current wholesale price for the quantity concerned delivered to the Site less trade discount. OWNER reserves the right to furnish materials for the extra Work in which case no claim will be allowed by the CMaR for costs, overhead, and/or profit on such materials.

3. Equipment Rate: CMaR will be paid for the use of owned or rental equipment at the rental rate listed for such equipment in the GMP equipment rate sheet. Such rental rate will be used to compute payments for equipment whether the equipment is under the CMaR control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment will be the rate resulting in the least total cost to OWNER for the total period of use, and in general shall be the monthly rental rate divided by 176 times the actual hours used. If it is deemed necessary by CMaR to use equipment not listed in the publication specified in the General Conditions, an equitable rental rate for the equipment will be established by OWNER; CMaR may furnish cost data which might assist OWNER in the establishment of the rental rate. Payment for equipment shall be subject to the following:

a. All equipment shall, in the opinion of OWNER, be in good working condition and suitable for the purpose for which the equipment is to be used.

b. Before construction equipment is used on the Work, the CMaR shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to OWNER, in duplicate, a description of the equipment and its identifying number.

c. Unless otherwise specified in the Contract Documents, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

d. Individual pieces of equipment or tools having a replacement value of \$500 or less, whether or not consumed by use, will be considered to be small tools and no payment will be made therefore.

4. Equipment Rental Time: The rental time to be paid for equipment on the Site will be the time the equipment is in productive operation on the extra Work being performed and, in addition, will include the time required to move the equipment to the location of the extra Work and return it to the original location or to another location requiring no more time than that required to return it to its original location; except, that moving time will not be paid if the equipment is used on Construction

Phase Work not required as part of the Work Change Directive, Change Order, and/or Written Amendment other than the extra Work, even though located at the site of the extra Work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made for loading and transporting costs when the equipment is used at the site of the extra Work on Construction Phase Work not required as part of the Work Change Directive, Change Order, and/or Written Amendment other than the extra Work. Rental time will not be allowed while equipment is inoperative due to breakdowns. The rental time of equipment on the work Site will be computed subject to the following:

- a. When hourly rates are used, any part of an hour less than 30 minutes of operation will be considered to be half-hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation.
- b. When daily rates are used, any part of a day less than 4 hours operation will be considered to be half-day of operation. When owner-operated equipment is used to perform extra Work to be paid for on a time and materials basis, the CMaR will be paid for the equipment and operator, as set forth in subsections 1, 3 and 4 above.

10.2 UNAUTHORIZED CHANGES IN THE WORK

CMaR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by an amendment, modification, or supplement to the Contract Documents as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.10 or in the case of uncovering Work as provided in paragraph 13.04.B. Any Work that is to be done pursuant to a Change Order, but which is commenced prior to execution of a Change Order is at risk to be unauthorized work; Change Orders must be executed within thirty (30) days of commencement except when Work is covered by a Work Change Directive (in which case a Change Order incorporating the Work Change Directive) must be executed within ninety (90) days of the issuance of Work Change Directive).

10.3 EXECUTION OF CHANGE ORDERS

- A. OWNER and CMaR shall execute appropriate Change Orders (or Written Amendments) covering:
 1. Changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;
 2. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and the substantiating documents for a change in Contract Times shall include documentation of the nature and cause of any delay(s) and;
 3. Changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by OWNER's Representative pursuant to para-

graph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CMaR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.17.A.

- B. In signing a Change Order, the OWNER and CMaR acknowledge and agree that:
1. The stipulated compensation (Contract Price or Contract Times, or both) set forth in the Change Order includes payment for (i) the Cost of the Work covered by the Change Order, (ii) CMaR fee for the overhead and profit, (iii) interruption of progress schedules, (iv) delay and impact, including cumulative impact, (to the extent known or should be known with reasonable diligence), on other Work under the Contract Documents, and (v) extended overhead;
 2. The Change Order constitutes full mutual accord and satisfaction for the change to the Work;
 3. No reservation of rights to pursue subsequent claims on the Change Order will be made by either party; and
 4. , to the best of the Parties' knowledge and belief formed after due review of all reasonable considerations, no further amendment of the Contract Documents will arise of or as a result of the Change Order; and
 5. OWNER has an appropriation of funds sufficient to cover the additional compensation set forth in the Change Order, if applicable.
- C. All Change Orders shall include the following language: "The equitable adjustment (time and cost) set forth in this Change Order comprises the total adjustment due the CMaR, all Subcontractors, and all Suppliers, for the Work or change defined in the Change Order, including impacts on unchanged work. By signing the Change Order, the CMaR acknowledges and agrees on behalf of himself, all Subcontractors, and all Suppliers, that the stipulated adjustment includes adjustment for all Work contained in the Change Order, plus all adjustment for the interruption of schedules, extended field overhead costs, delay, and all impact, ripple effect or cumulative impact on all other work under this Contract. The signing of the Change Order indicates that the Change Order constitutes the full mutual accord and satisfaction for the change, and that the time and/or cost under the Change Order constitutes the total equitable adjustment owed the CMaR, all Subcontractors, and all Suppliers as a result of the change. The CMaR agrees to waive all rights, without exception or reservation of any kind whatsoever, to file any further Claim related to this Change Order. No further Claim or request for equitable adjustment of any type shall arise out of or as a result of this Change Order or the impact of this Change Order on the remainder of the Work under this Contract."

10.4 NOTIFICATION TO SURETY

If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, providing the notice will be

CMAr's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any change. A copy of the notification of the change and of the surety's change to the applicable bond shall be provided to the OWNER.

OWNER shall require a Bond rider for any modifications or extensions granted by OWNER in which a modification in the Contract Price is an increase of 10% or \$10,000, whichever is greater, over the then-current Contract Price. Such Bond rider shall be returned with the executed Change Order, and OWNER Procurement Representative shall not execute the Change Order until a Bond rider acceptable to OWNER is received.

10.5 CLAIMS AND DISPUTES

- A. Claims submitted by CMAr for an adjustment in the Contract Price shall be calculated in accordance with the provisions of paragraph 12.01. A Claim for an adjustment in Contract Times shall be in accordance with the provisions of paragraph 12.02.

Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by CMAr to OWNER's Representative promptly (but in no event later than thirty (30) days) after the start of the event giving rise to the Claim, dispute or other matter (unless OWNER's Representative allows additional time, in writing, for CMAr to submit additional or more accurate data in support of such Claim, dispute, or other matter). The written notice shall include (i) a statement of the amount or extent of the Claim, dispute, or other matter, (ii) supporting data explaining the reason, amount, and /or extent of the Claim, dispute, or other matter and, (iii) a written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. "Supporting data" includes but is not limited to, daily diaries, schedules, timesheets, and receipts. CMAr failure to submit such supporting data shall be a waiver of any and all Claims related to the data.

- B. OWNER's Representative will render a formal decision in writing no later than thirty (30) days after receipt of the Claim and all supporting documentation. OWNER's Representative's written decision on a Claim, dispute, or other matter will be final and binding upon OWNER and CMAr unless within thirty (30) days of the denial of the Claim CMAr submits a request for mediation pursuant to paragraph 10.09.
- C. If OWNER's Representative does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 61 days after receipt of the Claim and supporting documentation.
- D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.A.
- E. The time limits of paragraphs 10.05.A and 10.05B may be extended by mutual agreement.

10.6 EXCEPTIONS

- A. **CMAr** shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not

required by the Contract Documents as amended, modified and supplemented as provided in paragraph 3.4, except in the case of an emergency as provided in paragraph 6.10 or in the case of uncovering Construction as provided in paragraph 13.3.

10.7 MEDIATION

If a dispute arises between the parties relating to this Contract, not resolved by the process described in paragraph 10.05, the following procedure shall be followed:

- A. The Parties shall hold a meeting promptly, but in no event later than thirty (30) calendar days from the initial written notice of the dispute, or if a Claim has been denied as provided in paragraph 10.05 above, within thirty (30) days of such denial, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the Parties hereunder or be deemed a waiver by a Party hereto of any remedies to which such Party would otherwise be entitled thereunder unless otherwise agreed to by the Parties in writing.
- B. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation.
- C. The parties will jointly appoint a mutually acceptable mediator. If they fail to do so within twenty (20) calendar days from the conclusion of the negotiation period, they shall each select a mediator. The two mediators will then appoint, within ten (10) calendar days of their selection, a third mediator who shall, as the sole mediator, conduct mediation for the parties.
- C. The parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) calendar days. The substantive and procedural law of the State of Colorado shall apply to the proceedings. If the parties are not successful in resolving the dispute through mediation, then the parties shall be free to litigate the matter and agree that in the event of such litigation that the exclusive venue for such litigation shall be the El Paso County District Court, Colorado Springs, Colorado, and if necessary, for exclusive federal questions, the United States District Court for the District of Colorado.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.1 COST OF THE WORK

The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CMaR for performing the Work.

- A. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CMaR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER or as

otherwise set forth in paragraph 10.1.F, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B:

1. Payroll costs for employees in the direct employ of CMaR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CMaR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Supplier's field services required in connection therewith. All cash discounts shall accrue to CMaR unless OWNER deposits funds with CMaR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates, refunds, and returns from sale of surplus materials and equipment shall accrue to OWNER and CMaR shall make provisions so that they may be obtained.
3. Payments made by CMaR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CMaR shall obtain competitive bids from Subcontractors acceptable to OWNER and CMaR and shall deliver such bids to OWNER, who will then determine, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CMaR Cost of the Work and fee as provided in this paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The portion of necessary transportation, travel, and subsistence expenses of CMaR employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CMaR.

- c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from CMaR or others in accordance with rental agreements approved by OWNER with the advice of OWNER's Representative and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, subject to paragraph 16.09 herein and for which CMaR is liable, imposed by Laws and Regulations and not eligible for tax exemption or refund.
- e. Deposits lost for causes other than negligence of CMaR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for Permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CMaR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.03), provided such losses and damages have resulted from causes other than the negligence of CMaR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Calculation of the amount of such losses shall reduce the amount of the loss by the value of any settlements obtained by CMaR with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CMaR fee.
- g. The cost of fuel and sanitary facilities at the Site.
- h. The cost of Site office, storage trailers, Site security and fencing, office or computer equipment, fuel and sanitary facilities utilized at the Site. Any office equipment, instruments, T1 line or other internet access line, high speed internet access line, and service, computer equipment, cameras, site radios, or other such equipment purchased by CMaR and invoiced entirely to OWNER shall become property of OWNER upon conclusion or termination of this Contract
- i. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.
- j. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

- k. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CMaR is required by the Contract Documents to purchase and maintain.
 - l. Costs incurred due to an emergency affecting the safety of persons and property at the Site, unless such emergency was caused by the acts or omissions of CMaR or its Subcontractors—except to extent caused by negligence or malfeasance of Contractor.
 - m. To the extent required of CMaR in the Statement of Work:
 - i. Costs of testing, licensing, and permitting, including but not limited to, inspection fees, license fees, government charges, field tests, bacteriological tests, material tests, compaction tests, and concrete tests.
 - ii. Costs for start-up and testing, including, but not limited to, chemicals, testing and sampling equipment, laboratory tests and analysis, and other related costs.
- B. Except to the extent agreed in a lump sum amount or agreed unit rate, the term Cost of the Work shall not include any of the following items:
- 1. Payroll costs and other compensation of CMaR officers, executives, principals (of partnerships and sole proprietorships), attorneys, auditors, accountants, whether at the Site or in CMaR principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the CMaR fee.
 - 2. Expenses of CMaR principal and branch offices other than CMaR office at the Site.
 - 3. Any part of CMaR financing expenses, including interest on CMaR capital employed for the Work and charges against CMaR for delinquent payments.
 - 4. Costs due to the negligence of CMaR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 1. Costs associated with preparation of any Potential Contract Change or Claim.
 - 2. Costs incurred due to the acts or omissions of CMaR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to fines or penalties imposed by governmental entities, remediation costs, or environmental clean-up costs caused by or resulting from violations of law or negligence of CMaR.
 - 3. Bonuses paid in whatever form, or paid time off in place of, or in addition to,

actual time off.

4. Costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.
 9. Royalties, damages for infringement of patents, and costs of defending suits therefrom, and deposits lost for causes not directly attributable to OWNER.
 10. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.
- C. Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, CMaR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to OWNER an itemized cost breakdown together with supporting data.

11.2 CASH ALLOWANCES

- A. It is understood that CMaR will include in the GMP all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to OWNER. CMaR agrees that:
1. The allowances include the cost to CMaR (less project specific trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. CMaR costs for unloading and handling on the Site, labor, installation costs, overhead profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- B. Prior to final payment, an appropriate Change Order will be issued as recommended by OWNER's Representative to reflect actual amounts due CMaR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.1 CHANGE OF CONTRACT PRICE

- A. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CMaR for performing the Work. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the OWNER and the other party to the Contract in accordance with the provisions of paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined by a mutually agreed lump sum. The mutually agreed lump sum shall be established as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents the adjustment shall be established based on the Cost of the Work for the Work required in the Change Order (determined as provided in paragraph 11.01) plus a CMAr Fee or CMAr Self-Performed Fee for overhead and profit (determined as provided in paragraph 12.01.C); or
 3. Where the Work involved is not covered by unit prices and the parties agree that the value of the Change Order cannot reasonably be determined based on the Cost of the Work, the adjustment may be established as a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2).
 4. Where the Work included is not covered by unit prices contained in the Contract Documents, and mutual agreement cannot be reached between OWNER and CMAr under paragraph 12.01.B.2 and 12.01.B.3 above, then the adjustment to the Contract price shall be determined by OWNER in its sole discretion.
- C. **CMAr Fee:** The CMAr Fees for any Work covered by a Change Order or of any Claim for an adjustment of the Contract Price will be determined, in accordance with Article 10, and the CMAr Fees or CMAr Self-Performed Fee identified in subsection 4.02 of the Contract.
- D. The amount of credit to be allowed by CMAr to OWNER for any change which results in a net decrease in cost will be the portion of CMAr Fee related to the removed Work, plus the amount included in CMAr Schedule of Values for the work to be removed from the Work
- E. When both additions and credits are involved in any one change, the adjustment in CMAr Fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e3, inclusive.
- E. OWNER's approval of inclusion of stand-by costs shall occur only when equipment is idle for delays beyond the control of the CMAr, as provided in paragraph 12.03, or delays beyond the control of OWNER and CMAr, as provided in paragraph 12.05. Stand-by rates may be based on the CMAr's actual costs or data from an approved rate guide reduced by sixty percent (60%). In either instance, no operating costs shall be included, and equipment overhead shall not be included in the stand-by rate if recovered in other cost methods. Adjustments shall be determined based on eight (8) hours per day, forty (40) hours per week, one hundred seventy-six (176) hours per month.

12.2 CHANGE OF CONTRACT TIMES

- A. The Contract Times (including the Milestones) may only be changed by a Change Order or by a Written Amendment.

- B. Any Claim for an adjustment in the Contract Times (including the Milestones) shall be based on written notice submitted by the party making the claim to the OWNER Representative and the other party to the Contract in accordance with the provisions of paragraph 10.05. Any adjustment of the Contract Times (including the Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (including the Milestones) will be determined in accordance with the provisions of this Article 12.

12.3 DELAYS BEYOND CMAR'S CONTROL

Where CMaR is prevented from completing any part of the Work within the Contract Times (including the Milestones) due to delay beyond the control of CMaR, the Contract Times (including the Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.B and/or Contract Price may be increased as provided in paragraph 12.5. Delays beyond the control of CMaR shall include, but not be limited to, acts or neglect by OWNER or OWNER's Consultant, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, and Force Majeure events, and must be recorded by CMaR on the daily log.

12.4 DELAYS WITHIN CMAR'S CONTROL

The Contract Times (including the Milestones) will not be extended due to delays within the control of CMaR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CMaR. Such delays shall entitle OWNER to withhold or delay any progress payment or final payment that becomes due until the project is brought back within schedule. CMaR is expected to exhaust all avenues to bring project back on schedule including, but not limited to, working overtime and double shifts at no additional cost to OWNER.

12.5 DELAYS BEYOND OWNER'S AND CMGC'S CONTROL

Where CMaR is prevented from completing any part of the Work within the Contract Times (including the Milestones) due to delay beyond the control of both OWNER and CMaR, the Contractor shall be entitled to an equitable adjustment in the Contract Times and/or Contract Price in accordance with Section 10

12.6 DELAY DAMAGES

- A. In no event shall OWNER, OWNER's Representative, OWNER contractors, or OWNER's Consultants be liable to CMaR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:
1. delays caused by or within the control of CMaR; or
 2. not used.
- B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CMaR due to delay, interference, or disruption directly

attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

ARTICLE 13 - CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

13.1 NOTICE OF DEFECTS

Prompt notice of all defective Work of which OWNER, OWNER's Representative, or OWNER's Consultants has actual knowledge will be given to CMaR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.2 ACCESS TO WORK

OWNER, OWNER's Representative, OWNER's Consultants, other representatives and personnel of OWNER, independent testing laboratories, and Authorities Having Jurisdiction will have access to the Site and the Work at all times for their observation, inspecting, and testing. CMaR shall provide them proper and safe conditions for such access and advise them of CMaR's Site safety procedures and programs so that they may comply therewith as applicable.

13.3 UNCOVERING WORK

If any Work is covered contrary to the written request of OWNER's Representative, it must, if requested by OWNER's Representative, be uncovered for OWNER's Representative's observation. If OWNER considers it necessary or advisable that covered Work be observed by OWNER's Representative or inspected or tested by others, CMaR, at OWNER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as OWNER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CMaR shall pay all Losses arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); or if replacement or reconstruction is not required by OWNER, OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, CMaR shall be allowed an increase in the Contract Price or an extension of the Contract Times (including the Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CMaR may make a Claim therefor as provided in paragraph 10.05.

13.4 OWNER MAY STOP THE WORK

- A. If the Work is defective, or CMaR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CMaR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CMaR,

any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them. OWNER or Owner's Representative may also stop work at any time if the OWNER or the Owner's Representative reasonably believes an unsafe condition exists which may cause injury or harm to individuals and/or property.

- B. Any stoppage of Work in accordance with this Section shall be deemed a delay within CMAr exclusive control.

13.5 CORRECTION OR REMOVAL OF DEFECTIVE WORK PRIOR TO SUBSTANTIAL COMPLETION

Prior to Substantial Completion, CMAr shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective. CMAr shall pay all Losses arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.6 CORRECTION PERIOD

A. REQUIRED CORRECTION AFTER SUBSTANTIAL COMPLETION

If within the Warranty Period: (i) any Work is found to be noncompliant with the requirements in the Contract Documents, or (ii) there is any defect in the Work in violation of the warranties in paragraph 6.19 or (iii) if the repair of any damages to the land, water or groundwater, or areas made available for Contractor's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 4.01 is found to be defective, Contractor shall promptly or by a timeframe established by OWNER, without cost to OWNER and in accordance with OWNER's written instructions: (x) repair the affected land, water or groundwater, or areas, or (y) correct the affected Work or, remove it from the Project and replace it with Work that is compliant, and (z) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land, water or groundwater, or areas resulting therefrom. In taking such corrective action, Contractor shall identify the cause of the non-compliance or defect including, as necessary or otherwise agreed by the parties, performing a root-cause analysis and provide the results (and supporting documentation, if requested) of such analysis to OWNER. If Contractor does not promptly comply with the terms of OWNER's instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to correction or repair or removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor. Repetitive Malfunction of an equipment or product item shall be cause for replacement and an extension of the Warranty Period as set forth in paragraph C, below. A Repetitive Malfunction shall be defined as any subsequent failure of the same equipment or product item following two attempts to repair by CMAr or its Subcontractors.

- B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications

or by Written Amendment. If the correction period begins at an earlier date, then the correction period shall be automatically extended to one year following Substantial Completion.

- C. Where Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.06, the correction period hereunder with respect to such Work will be for the longer of the Correction Period stated in paragraph 13.06.A or one year after such correction or removal and replacement has been satisfactorily completed, provided, however, all obligations under this Article 13 shall terminate thirty six (36) months from the beginning of the applicable Warranty Period.
- D. CMAr shall provide option pricing for extended warranty terms for specific Equipment to the extent identified in the Scope of Work. Should OWNER elect to exercise such option, the Parties shall incorporate such terms in a mutually acceptable Amendment and/or Change Order.
- E. OWNER'S EXCLUSIVE REMEDIES AND CONTRACTOR'S ONLY OBLIGATIONS ARISING OUT OF OR IN CONNECTION WITH DEFECTIVE WORK (PATENT, LATENT OR OTHERWISE), WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, SHALL BE THOSE STATED IN THIS ARTICLE 13.

13.7 ACCEPTANCE OF DEFECTIVE WORK

If, instead of requiring correction or removal and replacement of Work, pursuant to Section 13.07 OWNER (and, prior to final payment,) prefers to accept it, OWNER may do so. CMAr shall pay all Losses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept noncompliant Work and the diminished value of the Work to the extent not otherwise paid by CMAr pursuant to this sentence. If any such acceptance occurs prior to OWNER's Representative's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CMAr to OWNER.

13.8 OWNER MAY CORRECT DEFECTIVE WORK

- A. If CMAr fails within a reasonable time after written notice from OWNER's Representative, or within the time established in OWNER's notice, to correct defective Work or to remove and replace rejected Work as required by OWNER in accordance with paragraph 6.12, or if CMAr fails to perform the Work in accordance with the Contract Documents, or if CMAr fails to comply with any other provision of the Contract Documents, OWNER may, after seven (7) days written notice to CMAr, correct and remedy any such deficiency.

- B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CMaR from all or part of the Site, take possession of all or part of the Work, and suspend CMaR services related thereto, take possession of CMaR tools, appliances, construction equipment, and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CMaR but which are stored elsewhere. CMaR shall allow OWNER, OWNER's Representative, agents, employees, OWNER's other contractors and OWNER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.
- C. All Losses incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.08 will be charged against CMaR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; OWNER shall then be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefor as provided in paragraph 10.05. Such Losses will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CMaR's defective Work.
- D. CMaR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.08.

ARTICLE 14 - PAYMENTS TO CMGC AND COMPLETION

14.1 SCHEDULE OF VALUES

For each Package, before the first Application for Payment, CMaR shall submit to OWNER a Schedule of Values. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as OWNER may require. The Schedule of Values, as may be modified pursuant to the direction of OWNER, shall be used as the basis for reviewing the Applications for Payment. The Schedule of Values approved by OWNER will serve as the basis for progress payments for that Package and will be incorporated into a form of Application for Payment acceptable to OWNER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.2 PROGRESS PAYMENTS

- A. *Applications for Payments*
 - 1. At least twenty (20) days before the date established for each progress payment (but not more often than once a month), CMaR shall submit to OWNER's Representative for review an Application for Payment filled out and signed by CMaR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be

accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all security interests and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CMaR stating that all previous progress payments received on account of the Work have been applied on account to discharge CMaR legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Contract.
4. Each Application for Payment shall be accompanied by a certified payroll statement from CMaR for all Self-Performed Work not performed on lump sum or agreed unit rate basis and a written itemized and detailed schedule which sets out the percentage of completion of each portion of the Work, quantities, and actual costs of each item paid, the amount of CMaR Fees, the amount of CMaR Self-Performed Fee, the amounts paid by CMaR for all labor costs relating to the Work, authorized allowance items, and lump sum and/or unit rate amounts due for which payment is requested. Such schedule shall be accompanied by CMaR affidavit that the quality of the Work covered by the application is in accordance with the Contract Documents, that the construction has progressed to the point indicated and, that the costs of such items are, to the best of CMaR knowledge, true, accurate, and conforming to the requirements of the Contract Documents.
5. Applications for Payment from CMaR shall be accompanied by applications for payment or invoices submitted to CMaR by its Subcontractors and suppliers.
6. CMaR Applications for Payment shall be supported by releases of liens and/or copies of canceled checks for Work from all first tier Subcontractors and Suppliers for which payment has previously been made by OWNER, and such documentation and detailed information as may be reasonably required to substantiate the validity of the actual costs and fee amounts requested. OWNER may refuse to pay any item or items contained in any such Application for Payment until and unless documentation and details are submitted to the reasonable satisfaction of OWNER.

B. *Review of Applications*

1. OWNER's Representative will, within a reasonable period of time after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER or return the Application to CMaR indicating in writing OWNER's reasons for refusing to recommend payment. In the latter case, CMaR may make the necessary corrections and resubmit the Application.
2. OWNER's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by OWNER's

Representative to OWNER, based on OWNER's Representative's observations on the Site of the executed Work and on OWNER's Representative's review of the Application for Payment and the accompanying data and schedules, that to the best of OWNER's Representative's knowledge, information and belief:

- a. The Work has progressed to the point indicated;
 - b. The quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.06, and to any other qualifications stated in the recommendation); and
 - c. The conditions precedent to CMaR being entitled to such payment appear to have been fulfilled in so far as it is OWNER's Representative's responsibility to observe the Work.
3. By recommending any such payment OWNER's Representative will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to OWNER's Representative in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CMaR to additional payment from OWNER or entitle OWNER to withhold payment to CMaR.
 4. Neither OWNER's Representative's review of CMaR Work for the purposes of recommending payments nor OWNER's Representative's recommendation of any payment, including final payment, will impose responsibility on OWNER's Representative to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CMaR failure to comply with Laws and Regulations applicable to CMaR performance of the Work. Additionally, said review or recommendation will not impose responsibility on OWNER's Representative to make any examination to ascertain how or for what purposes CMaR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any security interests.
 5. OWNER's Representative may refuse to recommend the whole or any part of any payment if, in OWNER's Representative's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. OWNER's Representative may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in OWNER's Representative's opinion to protect OWNER from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Written Amendment or Change Orders;
- c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.08; or
- d. OWNER's Representative has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.
- e. Failure of the CMaR to submit schedules, required reports, or other information as required under the Contract.
- f. Failure of the CMaR to diligently prosecute the Work and maintain progress to assure completion within the Contract Times, or otherwise to keep to the progress schedule submitted to OWNER.
- g. Any reasonable doubt that the Work of the Contract can be completed for the balance then unpaid.

C. *Payment Becomes Due*

Thirty (30) days after OWNER's Representative's recommendation of payment to OWNER, the amount recommended will (subject to the provisions of paragraph 14.07.B and C) become due, and when due will be paid by OWNER to CMaR.

D. *Reduction in Payment*

1. OWNER may refuse to make payment of the full amount recommended by OWNER's Representative because:
 - a. Claims have been made against OWNER on account of CMaR performance or furnishing of the Work;
 - b. Security interests or Claims by Subcontractors or Suppliers have been filed in connection with the Work, except where CMaR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such security interests or Claims by Subcontractors or Suppliers;
 - c. There are other items entitling OWNER to a set-off against the amount recommended; or
 - d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.g or paragraph 15.02.A.
2. If OWNER refuses to make payment of the full amount recommended by OWNER's Representative, OWNER must give CMaR immediate written notice stating the reasons for such action and promptly pay CMaR any amount

remaining after deduction of the amount so withheld. OWNER shall promptly pay CMaR the amount so withheld, or any adjustment thereto agreed to by OWNER and CMaR, when CMaR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.

14.3 CMGC'S WARRANTY OF TITLE

CMaR warrants and guarantees that title to all Work (except materials and equipment) covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all security interests. Title to any equipment and materials to be incorporated into the Project will pass to OWNER upon delivery to the Site.

14.4 SUBSTANTIAL COMPLETION

- A. When CMaR considers the entire Work on a Package, substantially complete in accordance with the Contract Documents CMaR shall follow the requirements in Section 01 77 00 Closeout Procedures for obtaining a Certificate of Substantial Completion for that Package.
- B. OWNER shall have the right to exclude CMaR from that Site after the date of Substantial Completion on a Package, but OWNER shall allow CMaR reasonable access to complete or correct items on the punch list.

14.5 PARTIAL UTILIZATION

Use by OWNER at OWNER's option of any substantially completed part of the Work on a Package which has specifically been identified in the Contract Documents, or which OWNER, and CMaR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER without significant interference with CMaR performance of the remainder of the Work on that Package, may be accomplished prior to Substantial Completion of all the Work on that Package subject to the following conditions.

1. OWNER's Representative at any time may provide notice to CMaR in writing of OWNER's intent to use any such part of the Work of a Package which OWNER's Representative believes to be substantially complete. If CMaR agrees that such part of the Work is substantially complete, CMaR will certify to OWNER that such part of the Work is substantially complete and request OWNER's Representative to issue a certificate of Substantial Completion for that part of the Work. CMaR at any time may notify OWNER's Representative in writing that CMaR considers any such part of the Work ready and substantially complete and request OWNER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER's Representative and CMaR shall make an inspection of that part of the Work to determine its status of completion. If OWNER's Representative does not consider that part of the Work to be substantially

complete, OWNER's Representative will notify OWNER and CMaR in writing giving the reasons therefor. If OWNER considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.6 FINAL INSPECTION

Upon written notice from CMaR that the entire Work on a Package or an agreed portion thereof is complete, OWNER's Representative will promptly make a final inspection of that Package with CMaR and will notify CMaR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CMaR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.7 FINAL PAYMENT

A. Application for Payment

1. For each Package, after CMaR has, in the opinion of OWNER's Representative, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, marked up record documents (as provided in paragraph 6.11), and other documents, CMaR may make application for final payment for the Package following the procedure for progress payments.
2. The final Application for Payment for a Package shall be accompanied (except as previously delivered) by: (i) all documentation for that Package called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B and tax forms as described in paragraph 16.09; (ii) consent of the surety to final payment for that Package; (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all purported Lien rights arising out of or purported Liens filed in connection with the Work on that Package; and (iv) all documentation required for the transfer of applicable Permits for that Package.
3. In lieu of the releases or waivers of purported Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CMaR may furnish receipts or releases in full and an affidavit of CMaR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed but for the provisions of the City Code; and (ii) all payrolls, material and equipment bills, settlements pursuant to paragraph 6.10.A.2, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CMaR may furnish a

Bond or other collateral satisfactory to OWNER to indemnify OWNER against any purported Lien.

B. *Review of Application and Acceptance*

If, on the basis of OWNER's Representative's observation of the Work on a Package during construction and final inspection and OWNER's Representative's review of the final Application for Payment for that Package and accompanying documentation as required by the Contract Documents, OWNER's Representative is satisfied that the Work on that Package has been completed and CMaR's other obligations under the Contract Documents have been fulfilled, OWNER's Representative will, within sixty (60) days after receipt of the final Application for Payment for that Package, indicate in writing OWNER's Representative's recommendation of payment and present the Application for Payment to OWNER. OWNER's review may include a close-out audit of that Package. At the same time OWNER's Representative will also give written notice to CMaR that the Work on that Package is acceptable subject to the provisions of paragraph 14.09. Otherwise, OWNER's Representative will return the Application for Payment to CMaR, indicating in writing the reasons for refusing to recommend final payment, in which case CMaR shall make the necessary corrections and resubmit the Application for Payment. Within such time, a notice of final settlement for the applicable Work shall be advertised by OWNER in accordance with §38-26-107, C.R.S.

C. *Payment Becomes Due*

If no claims have been filed on or before the date of final settlement as advertised in the notice of final settlement, final payment for the Work included in the notice of final settlement and settlement thereof shall become due and will be paid by OWNER to CMaR within thirty (30) days after expiration of the claim period. If any unpaid claim is filed, OWNER shall withhold from CMaR sufficient funds to insure the payment of such claim, until OWNER is satisfied that the same is paid or withdrawn or sufficient surety of payment of the claim is provided.

D. *Failure to Request Final Payment*

In the event CMaR fails to make Application for Final Payment for applicable Work, or to resubmit a final Application for Payment for such Work within ninety (90) days after being requested to do so, OWNER may deem any and all retained funds to be abandoned property and shall give notice of abandonment to CMaR or OWNER may prepare a final Application for Payment for such Work and make payment to CMaR after providing notice to CMaR.

E. *Right to Set Off Against Final Payment*

OWNER may set off against the final payment any amounts due to OWNER from CMaR arising out of or under this Contract or any other contract between OWNER and CMaR.

14.8 FINAL COMPLETION DELAYED

If, through no fault of CMGC, final completion of the Work on a Package is significantly delayed, and if OWNER's Representative so confirms, OWNER shall, upon receipt of CMAr's final Application for Payment for such Package without terminating the Contract with respect to such Package, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Contract for that Work and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CMAr to OWNER with the Application for Payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

14.9 WAIVER OF CLAIMS

The making and acceptance of final payment will constitute:

- A. A waiver of all claims by OWNER against CMAr related to the Work being closed out, except claims arising from unsettled purported Liens or other encumbrances, from warranty work or defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CMAr's continuing obligations under the Contract Documents; and
2. A waiver of all claims by CMAr against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.1 OWNER MAY SUSPEND WORK

At any time and without cause, OWNER may suspend the Work or any portion thereof by notice in writing to CMAr. The notice shall provide an estimated date for the CMAr to resume work. CMAr shall resume the Work once OWNER provides a new start date. CMAr shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CMAr makes a Claim therefor as provided in paragraph 10.05.

15.2 OWNER MAY TERMINATE FOR CAUSE (2 CFR § 200 APPENDIX II(B); AND FAA ADVISORY CIRCULAR 150/5370-10, SECTION 80-09)

- A. The occurrence of any one or more of the following events ("Event of Default") will justify termination for cause:
 1. CMAr Fails to commence the Work under the Contract within the time specified in the Notice- to-Proceed;

2. CMAr's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers);
 3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
 4. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements;
 5. Becomes insolvent or declares bankruptcy;
 6. CMAr's disregard of Laws or Regulations of any Authority Having Jurisdiction;
 7. CMAr's disregard of the authority of OWNER or OWNER's Representative;
 8. CMAr's violation in any material provision of the Contract Documents;
 9. CMAr's failure to make prompt payments to its Subcontractors, sub-subcontractors and Suppliers of any tier, suppliers or laborers or any person working on the Work by, through, or under the CMAr or any of them, or any of their employees, officers, servants, members, and agents; or
 10. CMAr's (a) persistent failure to stay within ninety (90) days of the milestones agreed to by the Parties at the establishment of the progress schedule applicable to CMAr, or (b) continued failure to achieve Substantial Completion of any Package as required in the Contract Documents for a period of ninety (90) days.
- B. If one or more of the events identified in paragraph 15.02.A occur, OWNER or OWNER's Representative may give CMAr written notice of the Event of Default and direct the Event of Default be cured within seven (7) days if the Event of Default can be cured within such timeframe, or direct that within seven (7) days CMAr submit to OWNER for approval a written plan ("Plan") to cure the Event of Default. Within ten (10) days after receipt of the Plan, OWNER shall deliver written approval or disapproval, or approval with modifications, of the Plan to CMAr. OWNER shall not unreasonably withhold its approval of the Plan. If such Event of Default has not been cured within seven (7) days after the date of the written notice, if required by the notice, or such other time as agreed to in the approved Plan, OWNER or OWNER's Representative may, give CMAr (and the surety, if any) written notice that CMAr's services are being terminated for cause. Upon delivery of the termination notice, OWNER may terminate the services of CMAr in whole or in part, exclude CMAr from the Site, and take possession of the Work at the Site, and use the same to the full extent they could be used by CMAr (without liability to CMAr for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CMAr but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CMAr's shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all Losses sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CMAr. If such Losses exceed such unpaid balance, CMAr shall pay the

difference to OWNER. Such Losses incurred by OWNER will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

- C. Where CMaR services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CMaR then existing or which may thereafter accrue. Any retention or payment of moneys due CMaR by OWNER will not release CMaR from liability.
- D. Notwithstanding the foregoing, Payment for completed equipment delivered to and accepted by the Owner shall be at the Contract price. The Owner may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default.
- E. Owner will not terminate the Contractor's right to proceed with the Work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.
- F. If, after termination of the Contractor's right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

15.3 OWNER MAY TERMINATE FOR CONVENIENCE

A. The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.
4. Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.

5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the Owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

- 1) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
 - 2) documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
 - 3) reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
 - 4) reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.
- B. CMAr shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.4 CMAr MAY STOP WORK OR TERMINATE

If, through no act or fault of CMAr, the Work is suspended for more than ninety (90) consecutive days by OWNER or under an order of court or other public authority, or OWNER's Representative fails to act on any Application for Payment within thirty (30) days after it is submitted (except as otherwise authorized herein), or OWNER fails for thirty (30) days to pay CMAr any sum finally determined to be due after a recommendation by OWNER's Representative (except as otherwise authorized herein), then CMAr may, upon seven (7) days written notice to OWNER and provided OWNER does not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if OWNER's Representative has failed to act on an Application for Payment within thirty (30) days after it is submitted, or OWNER has failed for thirty (30) days to pay CMAr any sum finally determined to be due after a recommendation by OWNER's Representative, CMAr may, seven (7) days after written notice to OWNER, stop the Work until payment is made of all such amounts due CMGC. The provisions of this paragraph 15.04 are not intended to preclude CMAr from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CMAr's stopping the Work as permitted by this paragraph.

ARTICLE 16 - MISCELLANEOUS

16.1 GIVING NOTICE

- A. Whenever any provision of the Contract Documents requires the giving of written notice, the written notice will be delivered to OWNER's Representative and to the address below. All notices shall be deemed received on the date delivered regardless of whether the notice is accepted or rejected. All notices necessary or required under this Contract shall be in writing and shall be personally delivered, sent by overnight delivery service, or mailed by certified mail, postage prepaid and return receipt requested, as follows:

If to OWNER: Deanna K. Stoddard, AAE MPA
Airport Design and Construction Manager
Colorado Springs, Colorado 80916
Phone: (719) 550 -1950
Phone: (719) 550 - 7081

If to CMAA:

- B. The parties may change any address to which notice is to be given by giving notice as provided above of such change of address.

16.2 COMPUTATION OF TIMES

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

16.3 CUMULATIVE REMEDIES

Except to the extent expressly stated to the contrary, the duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply, unless expressly provided to the contrary in such provision.

16.4 SURVIVAL OF OBLIGATIONS

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract.

16.5 SECURITY COMPLIANCE

CMaR agrees that CMaR, all CMaR personnel, and all Subcontractors shall comply with all of OWNER's then current security policies (including, but not limited to the AIRPORT Security REQUIREMENTS attached hereto as **Exhibit C**), AIRPORT Rule and Regulations, procedures, and guidelines when at OWNER's locations and/or when accessing any OWNER network as attached hereto this Contact. Bringing or possessing firearms, ammunition, explosives or other weapons on OWNER's property is prohibited. CMaR, its Subcontractors, and their employees are prohibited from having weapons on their person while performing work for OWNER.

16.6 GOVERNING LAW

A. This Contract shall be construed in accordance with the laws of the State of Colorado without reference to conflicts of laws, the Colorado Springs City Charter, City Code, Ordinances, Rules, and Regulations.

B. In the event of litigation, this Contract shall be enforceable by or against the City of Colorado Springs on behalf of OWNER. In the event of any dispute over the Contract's terms and conditions, the exclusive venue and jurisdiction for any litigation arising thereunder shall be in the District Court of El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

16.7 [INTENTIONALLY DELETED]

16.8 ELECTRONIC COMMUNICATIONS

Email and all other electronic (including voice) communications from OWNER are for informational purposes only. No such communication is intended by OWNER to constitute either an electronic record or an electronic signature, or to constitute any consent by OWNER to conduct a transaction or give or receive any notice by electronic means. Any such intention or consent is hereby expressly disclaimed.

16.9 AUDIT

CMaR shall maintain accurate documents, papers and records of all amounts billable to and payments made by OWNER hereunder and related to the Work in accordance with recognized accounting practices, and as required by Laws and Regulations, and in a format that will permit audit, for a period of three (3) years after payment of the last invoice related to this Contract or resolution of Claim, whichever is later. Such records shall be open to reasonable inspection and subject to audit and/or reproduction, during normal working hours, by OWNER or its authorized representative. Lump sum amounts and agreed unit rates are not subject to audit.

16.10 TAXES (APPLIES ONLY TO CONTRACTS IN EXCESS OF \$5,000,000.00)

If applicable, the CMaR shall apply to the Colorado Department of Revenue for a tax-exempt certificate for this project. The certificate does not apply to City of Colorado Springs Sales and Use Tax which shall be applicable and included in your prices and rates in all cases. The tax-exempt project number and the exemption certificate only applies to

County, PPRTA (Pikes Peak Rural Transportation Authority), and State taxes when purchasing construction and building materials **to be incorporated in this project**.

Furthermore, the exemption **does not** include or apply to the purchase or rental of equipment, supplies or materials that **do not become a part of the completed project or structure**. In these instances, the purchase or rental is subject to full taxation.

The CMaR and all Subcontractors shall include in their prices and rates City of Colorado Springs Sales and Use Tax on the work covered by the Contract, and other taxes as applicable.

Note: For all equipment, materials, and supplies incorporated into the work purchased from vendors or suppliers not licensed to collect City Sales Tax (i.e. out of state suppliers, etc.) City Use Tax is due and payable to the City. The CMaR shall execute and deliver, and shall cause the CMaR'S Subcontractors to execute and deliver to the OWNER Procurement and Contract Services office, ST 16 forms listing all said equipment, materials, and supplies and the corresponding use Tax due. Any outstanding taxes due may be withheld from the final payment due the CMaR.

Forms and instructions can be downloaded at <https://coloradosprings.gov/sales-tax>. Questions can be directed to the City Sales Tax Division at (719) 385-5903.

OWNER Registration Numbers are as follows:

City of Colorado Springs
Federal I.D.: 84-6000574
Federal Excise: A-138557
State Sales Tax: 98-03479

16.11 CONFIDENTIALITY

A. CMaR acknowledges that OWNER is a public entity subject to the provisions of the Colorado Open Records Act, C.R.S. § 24-72-201 *et seq.* ("CORA"). Any confidential and/or proprietary information that either party discloses to the other with respect to this Contract shall be designated as confidential and proprietary by the disclosing party at the time of disclosure, and shall herein be referenced as "Confidential Information".

B. In the course and scope of the Work being performed under this Contract, CMaR may be provided, including by way of presence on OWNER's premises or by use of or access to OWNER's computer system, access to information that is OWNER's Customers' information. Customers' information includes, but is not limited to names, addresses, telephone numbers, or personal financial information of past or present users of OWNER. CMaR agrees that it shall not use, commercialize or disclose such Confidential Information to any person or entity, except to its own employees or OWNER-authorized subcontractors having a "need to know" to the extent and for the time necessary to performance of this Contract. Furthermore, CMaR shall burn, pulverize, or shred papers and destroy or erase all electronic media that contain OWNER's customer Confidential Information upon termination of this Contract or completion of the Work, whichever is sooner, or such other time(s) as may be specified in the SOW so that such Confidential Information cannot practically be read or reconstructed. OWNER has the right, but not the obligation, to audit CMaR compliance with this Section 9 by providing CMaR written notice 24 hours in advance of such audit.

C. To the extent permitted by law, the recipient of Confidential Information shall not engage in any use or disclosure of Confidential Information not expressly provided for in this Contract. In the event either party receives a request for such Confidential Information from a third party, notice thereof shall promptly be given to the other party. The recipient shall take reasonable steps to prevent any unauthorized possession, use, transfer or disclosure of such Confidential Information. In the event CMaR provides Confidential Information to OWNER that OWNER believes it is obligated to provide to a third party under CORA, CMaR shall be fully responsible for any expenses incurred by OWNER as a result of OWNER's failure to produce the Confidential Information, including, but not limited to, any costs of defense or other costs allowable to the third party under the law. Should the recipient learn of any such unauthorized possession, use, transfer or disclosure, it shall promptly notify the other party. If requested, the recipient shall deliver to the other party all Confidential Information (including all copies) disclosed to it with respect to this Contract, except that CMaR may retain one record copy of such Confidential Information for its project file, subject to maintaining the confidentiality of such information.

D. The disclosure provisions of this paragraph shall not apply to information that a) the parties had in their possession prior to disclosure by the other party; b) becomes public knowledge through no fault of the recipient; c) the recipient lawfully acquires from a third party not under an obligation of confidentiality to the disclosing party; or d) is required to be disclosed by law or court order.

CMaR shall not disclose any of OWNER's Confidential Information or documents to any third party without the prior written authorization of OWNER provided, however, Contractor may disclose confidential information to its employees, officers, affiliates and Subcontractors that have a need to know such information to perform the Work.

16.12 WAIVER OF CONSEQUENTIAL DAMAGES

NOTWITHSTANDING ANYTHING ELSE IN THIS CONTRACT TO THE CONTRARY, NEITHER PARTY (INCLUDING ITS SUBCONTRACTORS, AGENTS, ASSIGNEES, AFFILIATES AND VENDORS) SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUES, LOSS OF USE, LOSS OF OPPORTUNITY, LOSS OF GOODWILL, COST OF SUBSTITUTE FACILITIES, GOODS OR SERVICES, COST OF CAPITAL, COST OF REPLACEMENT POWER OR CLAIMS FROM CUSTOMERS OR SUPPLIERS OF OWNER, OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF THE CONTRACT, AND REGARDLESS OF WHETHER SUCH LOSSES, DAMAGES OR LIABILITY ARISES FROM BREACH OF CONTRACT OR WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE; PROVIDED; HOWEVER, THE PARTIES AGREE THAT DELAY LIQUIDATED DAMAGES SHALL NOT BE CONSIDERED CONSEQUENTIAL IN NATURE.

16.13 NON-PUBLIC INFORMATION / DATA ACCESS

Unless OWNER's Professional Services Rider is attached to this Agreement, OWNER's non-public information/data may not be accessed by CMaR (to include access onsite or

remotely via an OWNER-authorized VPN solution). For the sake of clarity, "accessed" is further defined as any ability to read or make use of the information/data.

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EXHIBITS and SUPPLEMENTAL CONDITIONS (SAMPLE ONLY, SUBJECT TO CHANGE)

Exhibit A - STATEMENT OF WORK

Exhibit A, Attachment 1 – Design & Preconstruction Phase Services (Phase 1)

Exhibit A, Attachment 2 – Construction Phase Services (Phase 2)

Exhibit B - Pricing –CMaR's Bid Form

Exhibit B, Attachment 1 – Lump Sum Fee for Project Phase 1 Work

Exhibit B, Attachment 2 – Schedule of values and GMP for Project Phase 2 Work

Exhibit C - Airport Security Requirements/SIDA Badging

Exhibit D - Insurance Requirements

Exhibit E - Airport Improvement Program Required Contract Terms and Conditions

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